Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, the FAA has determined that an AD is necessary which requires the above mentioned inspection and repairs.

Further, since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

British Aerospace: Applies to Model BAC 1-11 200 and 400 series airplanes, certificated in all categories. To prevent loss of rear spar frame integrity due to cracks on the rear spar web of the center section torque box, accomplish the following, unless already accomplished:

A. Prior to the accumulation of 30,000 landings or within the next 200 landings, whichever occurs later, after the effective date of this AD, inspect the rear spar frame, and repair if necessary, in accordance with paragraph 2, Accomplishment Instructions, of British Aerospace Alert Service Bulletin No. 53-A-PM5837, Issue 1, dated April 21, 1982.

B. Repeat the inspection of paragraph A., above, at intervals not to exceed:

(1) 3,600 landings for aircraft with less than 45,000 landings at the last inspection and

(2) 1,800 landings for aircraft with more than 45,000 landings at the last inspection.

C. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This amendment becomes effective October 6, 1983.

(Secs. 313(a), 314(a), 601 through 610, and 1102, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

Issued in Seattle, Washington on September 16, 1983.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 83-26554 Filed 9-28-83; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 83-NM-29-AD; Amdt. 39-4738]

Airworthiness Directives; British Aerospace Corporation Model BAC 1-11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This document amends an existing airworthiness directive (AD) applicable to British Aerospace Corporation model BAC 1-11 200 and 400 series airplanes which requires inspection of the flap track attachment brackets to detect cracks. Service experience has shown that the procedure currently used may not accurately detect the actual crack length. This amendment changes the method of inspection required. Failure to properly determine crack length could result in failure of the brackets and possible loss of the flap.

EFFECTIVE DATE: November 3, 1983.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, D.C. 20041 or may be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano, Foreign Aircraft Certification Branch, ANM-150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 767-2530. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The CAA has classified British Aerospace Corporation BAC 1-11 Alert Service Bulletin 57-A-PM4948 as mandatory. Issue 5 of this service bulletin specifies a dye penetrant inspection for detecting flap track attachment bracket cracks and determining their lengths. The dye penetrant procedure will improve the detection of cracks over the currently required visual inspection method per AD 81-14-07.

A proposal to amend AD 81-14-07 to require a more rigorous inspection method for the flap track attachment brackets to initially determine crack lengths more accurately was published in the **Federal Register** on May 26, 1983 (48 FR 23658). The comment period closed on July 18, 1983, and interested parties have been afforded an opportunity to participate in the making of this amendment. Only one comment was received and it stated no objection to the proposal.

It is estimated that 63 U.S. registered airplanes will be affected by this AD, that it will take approximately 5 manhours per airplane to accomplish the additional requirement of a more detailed inspection, and that the average labor cost will be $35 per manhour. Based on these figures, the total cost impact to U.S. operators of the amendment to the existing AD is estimated to be $11,025. For these reasons, the rule is not considered to be a major rule under the criteria of Executive Order 12291. Few small entities within the meaning of the Regulatory Flexibility Act will be affected.

Therefore, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by amending Airworthiness Directive (AD) 81-14-07, Amendment 39-4153 (46 FR 33223, June 29, 1981) as follows:

A. Amend paragraph (e) by replacing "Alert Service Bulletin 57-A-PM4948, Issue 4, dated July 18, 1977" with "Alert Service Bulletin 57-A-PM4948, Issue 5, dated January 28, 1981."

B. Revise paragraphs (m) and (n) to read as follows:

(m) Upon request of an operator and submission of substantiating data, the Manager, Seattle Aircraft Certification Office,

FAA, Northwest Mountain Region may adjust the inspection intervals.

(n) Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA Northwest Mountain Region.

This amendment becomes effective November 3, 1983.

(Secs. 313(a), 314(a), 601 through 610, and 1102, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

Issued in Seattle, Washington on September 19, 1983.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 83-26551 Filed 9-28-83; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 83-NM-23-AD; Amdt. 39-4737]

Airworthiness Directives; British Aerospace Corporation Model BAC 1-11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This document revises an existing airworthiness directive (AD) applicable to British Aerospace Corportation model BAC 1-11 200 and 400 series airplanes by requiring inspection of the nonreturn valves in the auxiliary power unit (APU). Service experience has shown that a more detailed inspection will improve crack detection and thereby reduce the fire hazard. This amendment allows a reduction in the inspection frequency of these components and also provides terminating action if certain modifications are incorporated.

EFFECTIVE DATE: November 3, 1983.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, D.C. 20041 or may be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano, Foreign Aircraft Certification Branch, ANM-150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 767-2530. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority of the United Kingdom (CAA) has classified BAC 1-11 Alert Service Bulletin 49-A-PM3122 as mandatory. Issue 4 of this service bulletin specifies a more complete inspection of the APU air delivery duct nonreturn valves, part numbers 1398B000 and 1398B000/1398B999, by using a dye penetrant inspection method for crack detection while also extending the inspection interval. The service bulletin also specifies that incorporation of British Aerospace modifications PM3148, PM3177, and PM4912 terminates the need for further inspections.

A proposal to revise AD 71-06-09 which would require a more detailed inspection of the nonreturn valves in the APU was published in the **Federal Register** on May 26, 1983 (48 FR 23659). The comment period closed on July 15, 1983, and interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to all comments received.

One commenter pointed out some numbering errors in the reference of the service bulletin paragraphs. The manufacturer commented that the part numbers were misquoted. The correct paragraphs of the applicable service bulletin and part numbers will be used in the final rule. The manufacturer also mentioned that modification PM4912 may be used to terminate certain inspection requirements. This modification is defined in the service bulletin but not cited in the Accomplishment Instructions. Since this change provides another option and it does not represent an additional burden to the operators, it is incorporated in the final AD.

It is estimated that 63 U.S. registered airplanes will be affected by this AD, that it will take approximately 2 additional manhours per airplane to accomplish the more detailed inspections, and that the average labor cost will be $35 per manhour. Based on these figures, the total cost impact of the AD to U.S. operators is estimated to be $4,410. For these reasons, this rule is not considered to be a major rule under the criteria of Executive Order 12291. Few small entities within the meaning of the Regulatory Flexibility Act will be affected.

Therefore, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously mentioned.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by revising Airworthiness Directive (AD) 71-06-09, Amendment 39-1177 (36 FR 5034, March 17, 1971) to read as follows:

British Aerospace: Applies to BAC 1-11 200 and 400 series airplanes, certificated in all categories. Compliance is required as indicated. To prevent malfunction of the auxiliary power unit (APU) air delivery duct nonreturn valve, accomplish the following:

A. For airplanes having nonreturn valve P/N 525180 installed:

1. Within the next 100 hours time in service after the effective date of this AD, unless already accomplished within the previous 60 hours time in service and thereafter at intervals not to exceed 160 hours time in service, perform the actions specified by paragraphs 2.2, 2.3, 2.4, and 2.5 of Accomplishment Instructions, British Aerospace Alert Service Bulletin 49-A-PM3122, Issue 4, dated March 31, 1982. Incorporation of British Aerospace modification PM3254 or PM4912 terminates the requirements of paragraphs 2.3 and 2.4 of the service bulletin.

2. Prior to further flight, unless already accomplished, install a placard adjacent to the APU control panel in clear view of the pilot, or amend the Airplane Flight Manual limitations Section 2, to read as follows: "Close APU air delivery valve when starting engine from an external supply or by cross-feeding air from an operating engine. Close APU air delivery value and shut down APU for takeoff and flight operations. Operational use of the APU in fight is prohibited." The placard may be removed or the amendment to the Airplane Flight Manual may be deleted upon replacement of APU air delivery duct nonreturn valve P/N 525180 with nonreturn valve P/N 1398B000 or 1398B000/1398B999 or 3031B000.

B. For airplanes having nonreturn valve P/N 1398B000 or 1398B000/1398B999 installed, within the next 750 hours time in service after the effective date of this AD, unless already accomplished within the previous 1,500 hours time in service from the last inspection, and thereafter at intervals not to exceed those specified in the service bulletin, perform the actions described by paragraphs 2.4.1, 2.4.2 and 2.4.3 of the service bulletin.

C. Incorporation of modifications PM3148, PM3177 and PM4912 constitutes terminating action for the repetitive inspections required by this AD.

D. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This amendment becomes effective November 3, 1983.

(Secs. 313(a), 314(a), 601 through 610, and 1102, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

Issued in Seattle, Washington on September 19, 1983.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 83-26550 Filed 9-28-83; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 83-ASW-21; Amdt. 39-4731]

Airworthiness Directives; Garlick Helicopters, Hawkins & Powers Aviation, Inc., Wilco Aviation (Bell) Model UH-1B Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that requires an inspection and, if necessary, replacement of tail rotor hubs installed on Garlick Helicopters, Hawkins & Power Aviation, Inc., Wilco Aviation (Bell) Model UH-1B helicopters. The AD is needed to prevent operation of the helicopter with unapproved tail rotor hubs which could lead to excessive structural loads resulting in possible loss of the helicopter.

DATE: Effective November 1, 1983.

Compliance required within the next 100 hours' time in service after the effective date of this AD unless already accomplished.

FOR FURTHER INFORMATION CONTACT: Gary B. Roach, Helicopter Certification Branch, ASW-170, Aircraft Certification Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone number (817) 877-2592.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring inspection of Garlick Helicopters, Hawkins & Powers Aviation, Inc., Wilco Aviation (Bell) UH-1B helicopters within 100 hours' time in service after the effective date of this AD to assure that unapproved tail rotor hub assemblies are not installed was published in the **Federal Register** on June 6, 1983 (48 FR 25210). If unapproved components are found, this AD would require replacement with approved components. This action is needed to prevent operation of the helicopter with unapproved tail rotor hubs which could lead to excessive structural loads resulting in mechanical failures and possible loss of the helicopter.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Comments were received and have been given due consideration, as discussed below.

One commenter stated that the AD was written against a Bell UH-1B model helicopter however, Bell Helicopter Textron, Inc., does not hold a type certificate for a UH-1B helicopter. The FAA concurs with this comment and appropriate corrections to the model designation have been incorporated.

Another commenter objected to the scope of the economic evaluation in that the AD did not consider the 100 tail rotor hubs, P/N 204-011-801-003, the commenter had in inventory. The P/N 204-011-801-003 tail rotor hub has not received FAA approval for use on the Model UH-1B. Economic evaluation cannot be determined on parts that were not intended to be used on the Model UH-1B and have not received FAA approval for that model.

Another commenter stated there was no need for the AD because he had flown 1100 hours with the P/N 204-011-801-003 tail rotor hub assembly installed. Routine operating experience does not in itself demonstrate compliance with the applicable airworthiness rules, therefore this time in service with the P/N 204-011-801-003 assembly cannot be accepted in lieu of compliance with this AD.

One commenter concurred with the AD.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Garlick Helicopters, Hawkins & Powers Aviation, Inc., Wilco Aviation (Bell) Model UH-1B Helicopters: Applies to Garlick Helicopters, Hawkins & Powers Aviation, Inc., and Wilco Aviation (Bell) UH-1B helicopters certified in all categories.

Compliance is required within the next 100 hours' time in service after the effective date of this AD unless already accomplished.

To prevent excessive structural loads which could lead to mechanical failure and possibly loss of a helicopter, accomplish the following:

(a) Inspect the tail rotor hub assembly and identify the part number of the tail rotor hub assembly. The tail rotor hub assembly part number is located on the yoke assembly.

(b) If the tail rotor hub assembly, P/N 204-011-801-003, is installed, remove and replace with P/N 204-011-801-005, 009, or 017.

(c) Any equivalent method of compliance with paragraph (b) above of this AD must be approved by the Manager, Aircraft Certification Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101.

(d) In accordance with FAR 21.197, flight is permitted to a base where the inspections required by this AD may be accomplished.

This amendment becomes effective November 1, 1983.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.89).

Note.—The FAA has determined that this regulation involves approximately 11 helicopters at an anticipated total expense of $5,306 per helicopter. Therefore, I certify that this action (1) Is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal, and (4) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Fort Worth, Texas, on September 15, 1983.

C. R. Melugin, Jr.

Director, Southwest Region.

[FR Doc. 83-26552 Filed 9-28-83; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 83-ASW-36; Amdt. 39-4732]

Airworthiness Directives; Societe Nationale Industrielle Aerospatiale (SNIAS) Model 355

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires an inspection of the splined flange attached to the forward end of the oil cooler fan wheel on SNIAS Model 355 series helicopters. The AD is needed to prevent the loss of tail rotor drive which could result in loss of directional control and possible loss of the helicopter.

DATES: Effective October 14, 1983.

Compliance required within the next 50 hours' time in service after the effective date of this AD (unless already accomplished).

FOR FURTHER INFORMATION CONTACT: Chris Christie, Manager, Aircraft Certification Staff, AEU-100, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium, telephone 512.38.30; or G. B. Roach, Helicopter Certification Branch, ASW-170, Aircraft Certification Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone number (817) 877-2592.

SUPPLEMENTARY INFORMATION: The FAA has determined that a tail rotor driveshaft splined flange experienced excessive wear which resulted in loss of tail rotor drive. This occurred in flight and an emergency landing was made. Numerous reports of excessive spline wear have been received. Since this condition is likely to exist or develop on other helicopters of the same type design, and airworthiness directive is being issued which specifies an inspection interval and rejection criteria for the tail rotor driveshaft splined flange.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Societe Nationale Industrielle Aerospatiale (SNIAS): Amendment 39-4732 Applies to all SNIAS Model 355 series helicopters that have splined flange P/N 355A34-1062-20, attached to the forward end of the oil cooler fan wheel.

Compliance is required as indicated unless already accomplished.

To prevent possible loss of tail rotor drive, accomplish the following:

(a) Within the next 50 hours' time in service after the effective date of this AD, inspect the splined flange (P/N 355A34-1062-20) as prescribed in SNIAS Model 355 Maintenance Manual, Section 65.10.00.602, paragraph 2, or FAA approved equivalent.

(b) Repeat the inspection prescribed in paragraph (a) above at intervals not to exceed 100 hours, until the splined flange (P/N 355A34-1062-20) is replaced with a new splined flange (P/N 355A34-1078-20).

(c) Any equivalent method of compliance with this AD must be approved by the Manager, Aircraft Certification Division, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76101, or by the Manager, Aircraft Certification Staff AEU-100, FAA, Europe, Africa, and Middle East Office, Federal Aviation Administration, c/o American Embassy, Brussels, Belgium.

(d) In accordance with § 21.197, flight is permitted to a base where the inspections required by this AD may be accomplished.

This amendment becomes effective October 14, 1983.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.89)

Note.—The FAA has determined that this regulation involves approximately 150 helicopters and the cost to each helicopter is approximately $610. Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291, and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

Issued in Fort Worth, Texas, on September 15, 1983.

C. R. Melugin, Jr.

Director, Southwest Region.

[FR Doc. 83-26553 Filed 9-28-83; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 230, 231, 239, 240, 241, 270 and 274

[Release Nos. 33-6486; 34-20220; 35-23069; IC-13529; File No. S7-958]

Disclosure of Executive Compensation

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission today announced the adoption of an amended and retitled Item of Regulation S-K, Item 402, which provides for uniform disclosure of the compensation paid to certain executive officers and directors, and the adoption of conforming amendments. The Commission also announced the conditional adoption of coordinating amendments to Form S-18 [17 CFR 239.28], a simplified registration statement form under the Securities Act of 1933. These actions are being taken as part of the Commission's Proxy Review Program, which includes a comprehensive reexamination of the disclosure requirements and procedural provisions relating to the solicitation of proxies. The adoption of amended Item 402 is intended to simplify the current disclosure requirements, reduce compliance burdens and allow registrants greater flexibility in selecting a presentation format while providing investors and security holders with more comprehensible information concerning executive compensation. In addition, the Commission today announced the rescission of four interpretive releases issued pursuant to old Item 402.

EFFECTIVE DATES: Revised Item 402 and the conforming amendments, including the conditional amendments to Form S-18, are effective for all documents filed on or after December 31, 1983. A registrant may comply with these provisions prior to that date, but if it elects to do so, it must comply with all applicable provisions and continue to do so in any subsequent filings.

Interested persons will have until October 31, 1983 to comment on the coordinating amendments to Form S-18, after which the Commission will review the comments and make such changes, if any, that it deems necessary and appropriate.

If no material changes are necessitated by the comments, the changes to Form S-18 will become final for all registration statements filed on Form S-18 on or after December 31, 1983.

ADDRESSES: Comments on the conditional adoption of coordinating amendments to Form S–18 should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. All comment letters should refer to File No. S7–958. All comments received will be available for public inspection and copying in the Commission Public Reference Room, 450 5th Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: With respect to Item 402, prior to the effective date, contact Elliot M. Pinta (202) 272–2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. After the effective date, Ann Glickman (202) 272–2573, Office of Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. With respect to Form S–18, contact H. Steven Holtzman, Special Counsel, (202) 272–2644, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced the adoption of amendments to Item 402 of Regulation S–K [17 CFR 229.402] containing uniform requirements for the disclosure in registration statements, periodic reports and proxy statements under the Securities Act of 1933 [15 U.S.C. 77a et seq. (1976 and Supp. IV 1980)] ("Securities Act") and the Securities Exchange Act of 1934 [15 U.S.C. 78a et. seq. (1976 and Supp. IV 1980)] ("Exchange Act") of the compensation paid to the registrant's executive officers and directors. In addition, the Commission adopted conforming amendments to Items 9, 10 and 11 of Schedule 14A [17 CFR 240.14a–101] and revised the following rules and forms to reflect the change from the term "management remuneration" to "executive compensation": Item 404 of Regulation S–K; Securities Act Rules 601 and 610(a); Item 11(k) of Form S–1; Items 3 and 22 of Form S–11; Exchange Act Rules 12(g)(3) and 14a–101; Item 6 to Form 10; Item 11 to Form 20–6; Item 11 of Form 10–K; Investment Company Act Rule 30(d); Items 9, 10 and 11 of Form N–1; Items 28, 36, 37 and 38 of Form N–8B–4; Items 10 and 11 of Form N–1R [17 CFR 229.404, 229.601, 230.610a, 239.11, 239.18, 240.12g3–2, 240.14a–101, 240.210, 249.220(6), 249.310, 270.30(d)–1, 273.11, 274.14, 274.101].

The Commission also announced the conditional adoption of coordinating amendments to Form S–18 [17 CFR 239.28], a simplified registration Form under the Securities Act designed for initial offerings by smaller issuers. The amendments revise Item 20 of Form S–18 to simplify and streamline the disclosure of compensation to executive officers and directors in a manner consistent with the changes to Item 402 of Regulation S–K.

The amendments to Item 402 adopted today relate to proposals that were published for comment in January 1983, (the "Proposing Release") as the fourth Commission rulemaking initiative pursuant to its Proxy Review Program.[1] The comments received on the proposals generally were favorable, and the Item and accompanying amendments are being adopted substantially as proposed. Several changes have been made in the proposal, however, including: (1) Retitling the Item; (2) altering the composition of the disclosure group; and (3) retaining the current requirement to disclose the net value realized on the exercise of stock options and stock appreciation rights ("SARs"). Additional minor modifications have been made pursuant to the comments received.

This release focuses primarily on the changes made from the proposal an the basis for those changes. As background for this discussion, the release briefly recounts the development of revised Item 402. Readers are directed to the text of the amendments and to the Proposing Release for a more complete statement of the history of Item 402 and the proposed amendments.

I. Background

Current Item 402 has been faulted as being overly complex and inordinately detailed. In addition, while the detail of the current provision was designed to alleviate many of the interpretive issue that had arisen under earlier provisions, numerous interpretive questions continued to arise.[2] Consequently, the Commission determined that a substantially new Item 402, rather than minor adjustments to existing Item 402, was necessary to achieve the goals of improving the effectiveness of executive compensation disclosure and reducing the burdens of preparation. New Item 402 was designed to implement these objectives by focusing on compensation actually paid or vested and eliminating the disclosure of contingent compensation; by limiting the compensation table, for the most part, to cash paid or distributed, as contrasted to all amounts expensed for financial reporting purposes; by allowing registrants to disclose other compensation and compensation paid pursuant to plans in a narrative, tabular or other format; and by focusing on those members of management who perform policy making functions for the registrant.

Proposed Item 402 was divided into five pargraphs: (a) Disclosure, in tabular form, of cash amounts paid or earned during the last fiscal year; (b) disclosure of compensation paid or to be paid pursuant to various plans which would be made in connection with the description of such plans; (c) disclosure of other compensation not covered by proposed paragraphs (a) or (b), such as perquisites, which would be disclosed in a narrative, tabular or other format subject to a designated threshold amount; (d) disclosure of standard and other arrangements for the compensation of directors; and (e) disclosure of compensation plans or arrangements relating to termination of employment or a change in control of the registrant.

II. Overview of Comments

The proposals generated a substantial amount of commentary.[3] Overall, the commentators supported the Commission's efforts to simplify disclosure requirements relating to executive compensation, while, at the

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[1] (Release No. 33–6449 (January 17, 1983) [48 FR 3625]). The first initiative under the Commission's Proxy Review Program was the adoption of a new uniform Regulation S–K item relating to the disclosure of certain relationships and transactions involving management (Release No. 33–6441 (December 2, 1982) [47 FR 55661]). The second was the adoption of amendments to various rules relating to the process by which issuers communicate with the beneficial owners of securities registered in the name of a broker, bank or other nominee (Release No. 34–20021 (July 28, 1983) [48 FR 35082]). The third was the adoption of amendments to the Commission's shareholder proposal rule, Rule 14a–8 (Release No. 34–20091 (August 16, 1983) [48 FR 38218]).

[2] Beginning with the provisions in effect in 1977 and continuing through the current disclosure provisions, the Commission has had to issue several interpretive releases regarding the disclosure of management remuneration. *See* Release No. 33–6384 (December, 3, 1981) [46 FR 60421]; Release No. 33–6166 (December 12, 1979) [44 FR 74803]; Release No. 33–6027 (February 22, 1979) [44 FR 16368]; Release No. 33–5904 (February 6, 1978) [43 FR 6050]; Release No. 33–5856 (August 18, 1977) [42 FR 43056]. In view of the substantial revision of Item 402, the Commission is rescinding the above-referenced interpretive releases.

[3] The Commission received 115 comment letters in response to the proposal. A copy of the letters of comment and a summary of comments are available for public inspection and copying at the Commission's Public Reference Room, 450 5th Street, N.W., Washington, D.C. 20549. (*See* File No. S7–958). A copy of the Final Regulatory Flexibility Analysis may be obtained by addressing a request to Elliot Pinta at the above address.

same time, providing investors and security holders with meaningful information relating to the registrant's executive compensation practices.

The commentators were virtually unanimous in their approval of several initiatives contained in the proposal, including: the focus on compensation actually received or vested; the simplification of the cash compensation table; and the increased flexibility afforded registrants in disclosing amounts paid pursuant to plans.

Other initiatives garnering substantial commentator support included: limiting the disclosure group to "executive officers"; rescinding currently required disclosure of interest paid on deferred compensation and of dividends awarded on restricted stock; simplifying the disclosure of stock options and SARs; establishing a disclosure threshold for perquisites; and retaining a separate provision for disclosure of change of control arrangements.

Many of the commentators also suggested ways in which they believed the proposals could be further improved or modified. Some of these suggestions were offered in response to Commission requests for specific comment. These suggestions and specific comments focused primarily on four areas: (1) The category and number of individuals with respect to whom disclosure of compensation is appropriate; (2) the scope of disclosure relating to stock options and SARs; (3) the valuation standard for perquisites; and (4) the provisions regarding change of control disclosure. Several of the specific comments and suggestions mentioned above, as well as others, are reflected in Item 402 as adopted. These comments, as well as others not reflected in Item 402, are discussed below.

III. Discussion of Item 402

The Commission has changed the title of new Item 402, replacing the title "Management Remuneration" with "Executive Compensation." This change recognizes that the phrase Executive Compensation is currently more widely employed and recognized by registrants, shareholders and investors than is the phrase used in the existing title.

A. Item 402(a)—Cash Compensation

Proposed paragraph (a) of Item 402, which sets forth the scope and format for disclosure of cash compensation paid to specified individuals and to a designated group, has been adopted, in most respects, as proposed, but with the modifications discussed below.

The Item retains the provision limiting to five the number of individuals with respect to whom individual disclosure is required. While the proposal did not alter the current provisions regarding the number or description of the individuals to be specifically identified in the Cash Compensation Table, the Proposing Release did contain a specific request for comments regarding the executive officers and directors with respect to whom individual disclosure is appropriate. The Proposing Release posited four alternative standards upon which an individual disclosure requirement could be based: (1) Individuals holding certain specified positions; (2) individuals performing certain designated functions; (3) management directors only; or (4) a straight numerical approach. A variety of responses were received, several of which combined two or more of the suggested approaches. The greatest number of commentators favored employing a straight numerical standard and, of these, the majority favored retention of five as the appropriate level for individual disclosure. The Commission has determined to retain that standard inasmuch as it has been the subject of considerable administrative experience and commentators have neither expressed great dissatisfaction with the standard nor presented a clearly superior alternative.

With respect to those persons who must be included in the disclosure group, current Item 402(a) requires disclosure of the aggregate compensation paid to a group comprising all officers and directors of the registrant and its subsidiaries. Proposed Item 402(a) limited the group's composition to only executive officers and directors. The commentators generally agreed with limiting the officers included in the group to executive officers. They stated that this would provide a better indication of the cost of a registrant's top management than does the current Item's requirements [4] and that this would be consistent with the requirement for individual disclosure, which is already so limited.

Several commentators suggested further that directors be deleted from the group inasmuch as their level of compensation does not, under normal circumstances, comprise a significant percentage of overall executive compensation. These commentators suggested that including directors in the group could give a misleading picture of the registrant's real cost of management. The Commission agrees and has limited group disclosure to all executive officers.[5] The Commission believes that deletion of directors from the paragraph (a)(1)(ii) disclosure group will provide shareholders and investors with more meaningful information regarding the cost of management. Moreover, information with respect to the compensation paid directors will continue to be required pursuant to paragraph (d) of Item 402. The Commission also notes that, in almost all instances, management directors will come within the definition of the term executive officer, so that their compensation will be disclosed pursuant to paragraph (a)(1)(i).

Second, proposed Item 402(a) would have required identification in the Cash Compensation Table of "all capacities" served by the named individuals. Several commentators suggested that this requirement was over-inclusive and likely to result in confusing and immaterial data. The Commission agrees and has modified Item 402(a) to require enumeration of only those principal capacities served by the named individual. The Commission emphasizes, that while only the principal capacities served need be listed in the Cash Compensation Table, the calculation of cash compensation received requires aggregation of amounts paid for services rendered in *all* capacities.

Finally, in response to commentator suggestion, the Commission has amended Instruction 1 to paragraph (a) to allow registrants to separately identify salaries, bonuses, deferred compensation and other forms of cash compensation if they so choose. The Commission believes that according greater flexibility in presentation of this information will benefit registrants, shareholders and investors alike.

B. Item 402(b)—Compensation Pursuant to Plans

Paragraph (b) requires disclosure regarding all plans pursuant to which the registrant has paid or proposes to pay in the future any form of compensation to the named individuals and group specified in paragraph (a) of

[4] Pursuant to Rule 405 under the Securities Act [17 CFR 230.405] and Rule 3b-7 under the Exchange Act [17 CFR 240.3b-7], the term "executive officer" is defined, when used in reference to a registrant, "as the registrant's president, any vice president of the registrant in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy making function or any other person who performs similar policy making functions for the registrant. Executive officers of subsidiaries may be deemed executive officers of the registrant if they perform such policy making functions for the registrant."

[5] A similar change has been made in Item 402(a)(1)(i), limiting individual disclosure to the registrant's five most highly compensated executive officers.

the Item. The proposal received a generally favorable response from the commentators and is adopted with the modifications discussed below.

First, the Item was changed to eliminate any problem relating to double counting—where compensation is reported in one year as vested pursuant to a plan and reported again in a subsequent year when it is actually paid or distributed.[6] Specifically, the language of paragraph (b)(1)(vi) is clarified to provide that amounts previously disclosed pursuant to paragraph (b)(1)(vii) or a predecessor provision as having been accrued or vested need not be disclosed again upon distribution.

Second, the Commission requested specific comment regarding the proposals to eliminate disclosure of interest paid on deferred compensation and dividends awarded on restricted stock. The commentators agreed that no disclosure should be required of either item, asserting that such amounts are essentially non-compensatory, do not represent a real cost of management, and are no different from interest or dividends received from non-registrant sources. The Commission agrees and has included a new instruction, General Instruction 3, to exclude disclosure of this data, subject to the certain conditions. With respect to interest on deferred compensation, the Instruction states that such amounts may be excluded from disclosure provided that the rate of interest accrued or provided for by a deferred compensation plan does not exceed prevailing market interest rates at the time of accrual or at the time the plan pursuant to which the compensation is deferred was established.

With respect to dividends on restricted stock, the Instruction provides that such dividends may be excluded provided the stock is not of a particular class available only to certain employees, such as executive officers, on a discriminatory basis

Third, the Commission has not adopted the proposal to modify the benefit computation basis for those deferred benefit and actuarial plans within paragraph (b)(2) of the Item. The current Item requires a benefit computation basis of "estimated credited years of service". The Commission proposed to modify that to require a benefit calculation as of "normal retirement age". This modification was proposed in the belief that this calculation would be less burdensome for registrants. The commentator responses, however, indicated that the modification would produce no real efficiencies and, indeed, may present new interpretive problems. In view of this, the Commission determined not to adopt the proposal, and the Item retains the current benefit computation basis of "estimated credited years of service".

Fourth, the Commission has adopted a modification of its proposal to limit the scope of disclosure regarding stock options and SARs. The Commission has adopted the proposal deleting the requirements to disclose the aggregate amount of securities underlying all unexercised options or SARs and the potential (unrealized) value of such unexercised options or rights. At the same time, the Commission has retained the requirement to disclose the net value realized from the exercise of stock options and SARs during the fiscal year.

The commentators, generally supportive of the Commission's efforts to simplify disclosure regarding stock options and SARs, were divided with respect to the need to retain the requirement to disclose the net value realized on the exercise of such options or rights. Those favoring deletion of that requirement asserted that such amounts are unrelated to the performance of services to the registrant. Conversely, commentators in favor of retaining disclosure of this information noted that such gains often comprise a material part of an individual's overall compensation and that stockholders and investors have a legitimate interest in disclosure of that information. In addition, a number of these commentators asserted that the exercise of an option or SAR may also involve a compensation cost to the registrant.

The Commission has decided to retain the requirement to disclose the net value realized upon the exercise stock options and SARs during the preceeding fiscal year. The Commission has concluded that in deleting the currently required disclosure of the aggregate amount of securities underlying all unexercised options or SARs and the potential unrealized value of such unexercised options or rights, the revised Item significantly improves the clarity of disclosure provided and reduces the compliance burden on registrants. In view of these deletions, the Commission has concluded that disclosure of net value realized continues to be of value to investors and shareholders.

Finally, the adopted Item includes, as proposed, non-discriminatory relocation plans among those non-discriminatory plans specifically exempted from disclosure under paragraph (b). Several commentators suggested that the list be expanded to exclude generically all but those plans heavily weighted in favor of management. The Commission does not believe it would be appropriate to adopt such a broad exemption at this time.

C. Paragraph (c)—Other Compensation

Paragraph (c), effecting certain changes from the current disclosure requirements regarding non-cash compensation, was favorably received by the majority of commentators. Several commentators, noting that the proposal did not contain instuctions for valuing compensation within this paragraph requested that the Commission prescribe a specific valuation method.[7] The Commission has added an instruction to paragraph (c) specifying that the registrant's aggregate incremental cost is the valuation method to be employed. The Commission believes this valuation standard to be appropriate in view of the Item's focus on disclosure of the cost of management to registrants. At the same time, the Commission has adopted a disclosure threshold of 10 percent of the compensation reported in the Cash Compensation Table or $25,000, whichever is less. This threshold is identical to the existing Item's trigger for footnote disclosure of personal benefits. The Commission believes that this threshold, in combination with an aggregate incremental cost valuation standard, relieves registrants of unnecessary compliance burdens while providing shareholders and investors with meaningful information regarding personal benefits.

D. Paragraph (d)—Compensation of Directors

Proposed paragraph (d), derived from current Item 402(c), requires disclosure of both standard and other compensatory arrangements between the registrant and its directors. The Commission proposed only a minor language change to the text of the current Item,[8] but also requested

[6] *See* footnote 27 to the Proposing Release.

[7] The current Item provides that personal benefits shall be valued on the basis of the registrant's and subsidiaries aggregate actual incremental costs; however, if such aggregate costs are significantly less than the aggregate amounts the recipient would have had to pay to obtain the benefits, appropriate disclosure, including the aggregate value to the recipient, shall be made in a footnote to the table. The registrant may choose to disclose such aggregate value rather than aggregate incremental costs in the table, in which event such footnote disclosure is not required.

[8] The proposed change was intended to make clear that payments made to a directorn during the last fiscal year as compensation for a number of years' services, including services in the last fiscal year, would be required to be disclosed.

specific comment regarding the need to disclose payments or arrangements for payments to be made to a director in the year after the director has resigned. The majority of commentators suggested that no such disclosure be required, asserting that such information was not material to shareholder suffrage. The Commission agrees and has adopted the Item as proposed, with no requirement respecting year after resignation payments.

The Commission rejected the suggestion posited by several commentators that a disclosure threshold similar to that provided in paragraphs (a) or (c) be imposed on this paragraph. The Commission has concluded, in view of the unique role played by directors, that imposition of a disclosure threshold would not be appropriate.

E. Paragraph (e)—Change of Control Arrangements

As proposed, this paragraph, modeled on existing Item 402(i), required disclosure by the registrant of compensatory plans or arrangements with an individual identified under paragraph (a) which are triggered by such individual's resignation, retirement or termination of employment. The Commission invited specific comment regarding the need for a separate disclosure provision for such plans and arrangements as well as whether the scope of the proposed disclosure should be expanded.

The commentators were divided on the need for a separate paragraph dealing with such arrangements. Those finding such a provision unnecessary suggested that the disclosed matters either already were, or by amendment could be, encompassed by paragraph (b). Those favoring retention of a separate disclosure provision asserted that termination provisions are distinct from other plans in both intent and scope and, moreover, are of particular interest to shareholders. The Commission agrees with the latter comments and has determined to retain a separate disclosure provision for such arrangements.

As proposed, paragraph (e) would apply only to plans or arrangements triggered by the individual's resignation, retirement or any other termination of employment with the registrant or subsidiaries. Some commentators suggested that the triggering circumstances be expanded to include such things as a change in control of the registrant or a change in the individual's responsibilities following a change in control. These suggestions were consistent with the *Report of Recommendations of the Advisory Committee on Tender Offers* ("Advisory Committee Report").[9] The Commission has decided to effect this suggestion and expand the paragraph's coverage accordingly. This change also necessitated a retitling of the paragraph.

In addition, the Commission has decided to follow a recommendation made both by commentators and the Advisory Committee Report and codify an administrative interpretation of the current Item, clarifying that plans or arrangements within paragraph (e) are to be disclosed annually.[10]

The Commission requested specific comment regarding the need for additional requirements in this area, such as whether the plans or arrangements received shareholder approval. The commentators uniformly rejected the need for such additional disclosure, noting that shareholder approval of such plans or arrangements is not generally required by applicable state law. While the Commission has decided not to require such disclosure at this time, it notes that the Advisory Committee Report recommended that change of control related policies and compensation be submitted to the shareholders for a non-binding advisory vote. Thus, the issue will be considered by the Commission in the context of its consideration of the Advisory Committee Report.

IV. Coordinating Amendments

In addition to the conforming changes to the rules and forms noted in the introduction to this release necessitated by the new title, the coordinating amendments to Items 9, 10, and 11 of Schedule 14A proposed in the Proposing Release have been adopted by the Commission with some modifications. The Commission requested specific comments as to whether a reference to incentive stock options within Section 422A of the Internal Revenue Code should be added to Item 9 to permit registrants not to state the average option price per share of such options. The commentators generally favored inclusion of such reference and the Commission has followed that suggestion. Finally, changes have been adopted to conform the text of Items 9, 10 and 11 to the requirements adopted in Item 402(a) respecting individual and group disclosure.

V. Amendments to Form S–18

The Commission also has adopted, on a conditional basis, coordinating amendments to Form S–18. Form S–18 is a simplified registration form specifically designed to facilitate access to the public capital markets by certain smaller domestic and Canadian issuers. Form S–18 does not cross-reference the Executive Compensation item in Regulation S–K, but, instead, contains a separate item for the disclosure of executive compensation which is tailored to the type of disclosure generally made by first-time public issuers. Since certain aspects of the revised Item 402 of Regulation S–K appear appropriate for the simplied disclosure provisions in Form S–18, the Commission has conditionally adopted coordinating changes to Item 20 of Form S–18. The conditional amendments simplify the S–18 disclosure requirements and do not call for any information not required by old Item 20. Further, the conditional amendments are consistent with the Commission's efforts to conform S–18 to the disclusre requirements of other Forms, to the extent appropriate, while preserving the advantages of Form S–18 for smaller companies.

The amendments constitute a substantially new Item 20, titled "Executive Compensation." These changes, made to conform to Item 402 of Regulation S–K, are as follows: (1) Compensation paid to executive officers and directors are now required to be states separately; (2) cash compensation paid to executive officers must be presented in tabular form, while compensation pursuant to plans and other compensation may be presented separately in a narrative, tabular or other format, at the option of the registrant; (3) disclosure of individual compensation is required for only the five most highly compensated executive officers, rather than officers and directors; (4) the threshold for the disclosure of individual compensation was raised from $50,000 to $60,000,

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[9] The Advisory Committee on Tender Offers ("Advisory Committee") was established by the Commission in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. 1 (1976 and Supp. V 1981) on February 25, 1983 to examine the tender offer process and other techniques for acquiring control of public issuers and to recommend to the Commission legislative and/or regulatory changes the Committee considered necessary or appropriate. *See* Release No. 34–19528 (February 25, 1983) [48 FR 9111]. The Committee was composed of 18 members, including members of the business and financial community, legal and accounting professions and academia. The Advisory Committee submitted its Report to the Commission on July 8, 1983.

[10] The Advisory Committee's recommendations in this regard went beyond the scope of this Item and suggested that change of control arrangements between the registrant and any party be disclosed annually in a new "change of control" section of the proxy statement. The Commission expresses no opinion with regard to these recommendations at this time but will consider them in the context of its consideration of the Advisory Committee Report.

calculated on the basis of cash compensation; and (5) group disclosure is limited to executive officers, rather than all officers and directors.

The amendments to Item 20 divide the disclosure requirements into four paragraphs. Paragraph (a) requires disclosure, in tabular form ("Cash Compensation Table"), of all cash compensation paid during the registrant's last fiscal year to each of the registrant's five most highly compensated executive officers whose cash compensation exceeds $60,000, naming each individual. The registrant also must disclose the aggregate amount of cash compensation paid to all executive officers as a group, stating the number of individuals in the group without naming them.

The format of new Item 20 reflects technical revisions to title the tabular presentation "Cash Compensation Table," and to amend the headings to Columns B and C. The amended heading to Column B reads "capacities in which served" rather than "Capacities in which Remuneration Received," and Column C includes only "Cash Compensation," instead of "Aggregate Compensation."

Paragraph (a) of new Item 20 differs substantially from old Item 20 in that tabular presentation of information is required for cash compensation only, rather than for all compensation. In addition to cash compensation actually paid, new Item 20 requires disclosure of cash bonuses to be paid for services rendered during the last fiscal year, unless such amounts have not been allocated at the time of filing. This provision addresses the situation in which a bonus was earned during fiscal year but has not yet been paid. If the registrant knows the bonus amounts to be paid to the named individuals and group, those amounts must be included in the Cash Compensation Table. In the instance in which the registrant has not allocated bonus amounts at the time of the filing, such amounts would not be reported for the year in which they were earned, but in the year in which they were paid. The registrant also must disclose compensation that would have been paid in cash but for the fact that such payment has been deferred.

The disclosure of personal benefits and stock, retirement, pension and other plans was removed from paragraph (a) and placed in paragraphs (b) and (c). In addition, the instructions applicable to such benefits and plans were revised and moved to new paragraphs, or deleted.

Paragraph (b) requires the disclosure of compensation paid or distributed during the registrant's last fiscal year, or proposed to be paid in the future, to the named individuals or group specified in paragraph (a), pursuant to plans. This paragraph is derived from paragraphs (a) and (b) old Item 20. Certain compensation paid pursuant to plans which previously was reported in tabular form under paragraph (a) now may be described in narrative, tabular or any other form chosen by the issuer pursuant to paragraph (b). As in old Item 20, no disclosure need be provided for nondiscriminatory group life, health, hospitalization, or medical reimbursement plans. The amendments added nondiscriminatory relocation plans to the compensation which need not be disclosed, consistent with previous staff interpretations. Likewise, information relating to pension or retirement benefits need not be disclosed if the amounts to be paid are computed on an actuarial basis under any plan which provides for fixed benefits in the event of retirement at a specified age or after a specified number of years of service.

With respect to stock option plans, in addition to the disclosure required for other plans, information must also be disclosed for options granted or exercised within the last fiscal year. As previously required, the registrant must disclose the title and aggregate amount of securities subject to options granted during the last fiscal year. Instead of disclosing the purchase price of the securities and the expiration dates of the options, however, the registrant must disclose only the average per share exercise price of the options. The market price of the security now is required only if the option exercise price was less than 100 percent of the market value of the security on the date of the grant, whereas old Item 20 required the market value in all circumstances as of the latest practicable date. In addition, for any options exercised during the last fiscal year, the net value realized upon the exercise of any options must be disclosed. The net value realized is calculated by subtracting the exercise value from the market price.

Paragraph (c) requires disclosure of all compensation not included in paragraphs (a) and (b), such as personal benefits, securities or property paid during the registrant's last fiscal year to the named individuals and group specified in paragraph (a). This disclosure previously was contained in paragraph (a) of old Item 20. Such disclosure need not be included for any named individual if the aggregate amount of such compensation is less than $25,000 or 10 percent of the compensation reported in the Cash Compensation Table. Old Item 20 allowed exclusion only if the specific amount of personal benefits could not be ascertained without unreasonable effort and the issuer reasonably believed, in any event, that the aggregate amount did not exceed $10,000. With respect to the group, disclosure of other compensation is not required if the aggregate amount is less than $25,000 times the number of persons in the group or 10 percent of the Cash Compensation Table for the group. This constitutes a change from the prior rule, which allowed the exclusion only if the specific amount could not be ascertained without unreasonable effort and the registrant reasonably believed the amount was less than $10,000 for each person in the group. The compensation reported in paragraph (c) is to be valued on the basis of the registrants and subsidiaries' incremental cost.

Paragraph (d) requires a brief description of all compensation received by directors of the registrant for all services as a director. This is a significant change from old Item 20, which grouped directors and officers in the disclosure of management compensation.

VII. Summary of Regulatory Flexibility Analysis

A summary of the Regulatory Flexibility Analysis with respect to the conditional amendments to Form S–18 is attached as an Appendix to this release.

VIII. Statutory Authority and Findings

The Commission hereby adopts Item 402 of Regulation S–K, the conditional amendments to Form S–18 and other conforming amendments pursuant to its statutory authority in sections 6, 7, 8, 10 and 19(a) of the Securities Act and sections 12, 13, 14, 15(d) and 23(a) of the Exchange Act. As required by section 23(a) of the Exchange Act, the Commission has considered the impact that these rulemaking actions would have on competition and has concluded that they would impose no significant burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

List of Subjects in 17 CFR Parts 229, 239 and 249

Reporting and recordkeeping requirements securities.

IX. Text of Amendments

In accordance with the foregoing, Title

17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933 AND SECURITIES EXCHANGE ACT OF 1934—REGULATION S-K

1. By revising § 229.402 to read as follows:

§ 229.402 (Item 402) Executive Compensation.

(a)(1) *Cash compensation.* Furnish, in substantially the tabular form specified, all cash compensation paid to the following persons through the latest practicable date for services rendered in all capacities to the registrant and its subsidiaries during the registrant's last fiscal year:

(i) *Five executive officers.* Each of the registrant's five most highly compensated executive officers whose cash compensation required to be disclosed pursuant to this paragraph exceeds $60,000, naming each such person; and

(ii) *All executive officers.* All executive officers as a group, stating the number of persons in the group without naming them.

(2) *Bonuses and deferred compensation.* The Cash Compensation Table also shall include:

(i) All cash bonuses to be paid to the named individuals and group for services rendered in all capacities to the registrant and its subsidiaries during the last fiscal year unless such amounts have not been allocated at such time as compensation disclosure is filed;

(ii) All cash bonuses paid during the last fiscal year for services rendered in all capacities to the registrant and its subsidiaries in a previous fiscal year, less any amount relating to the same contract, agreement, plan or arrangement included in the Cash Compensation Table for a prior fiscal year and less any amount that would have been so included but for the fact that the individual was not included in the Cash Compensation Table, as a named individual or as a member of the group, for such prior fiscal year; and

(iii) All compensation that would have been paid in cash to the named individuals and group for services rendered in all capacities to the registrant and its subsidiaries during the last fiscal year but for the fact that the payment of such compensation was deferred.

CASH COMPENSATION TABLE

(A)	(B)	(C)
Name of individual or number in group.	Capacities in which served.	Cash compensation.

Instructions to Item 402(a)

1. *Cash Compensation Table.* (A) The registrant may include additional columns in the Cash Compensation Table. For example, the registrant may segregate cash bonuses and deferred compensation from cash salaries and fees.

(B) Amounts deferred pursuant to Section 401(k) of the Internal Revenue Code are to be included in paragraph (a) for the fiscal year during which they are accured.

(C) Registrants need list in Column (B) of the Cash Compensation Table only those principal capacities served by each of the identified individuals. The cash compensation disclosed, however, must include cash compensation received in *all* capacities.

2. *Persons covered.* (A) Paragraph (a) of this section applies to any individual who was an executive officer of the registrant at any time during the last fiscal year. Information need not be disclosed, however, for any portion of the period during which such individual was not an executive officer of the registrant, provided a statement to that effect is made. With respect to an individual who becomes for the first time an individual whose compensation is to be reported in the Cash Compensation Table, it is not necessary to report compensation that would have been reported in the Table had the individual been included in prior years.

(B) Registrants should be flexible in determining which individuals should be named in the Cash Compensation Table in order to ensure that disclosure is made with respect to key policy making members of management. Consideration should be given to the question of whether an individual's level of executive responsibilites, viewed in conjunction with such individual's actual level of cash compensation is such that the registrant reasonably may conclude that the person is among its five most highly compensated, key policy making executive officers. Under this standard, it may be appropriate, in certain circumstances, to include an executive officer of a subsidiary in the Cash Compensation Table.

(C) In certain circumstances, it may be appropriate for a registrant not to include in the Cash Compensation Table an individual who is one of the registrant's five most highly compensated executive officers. Among the factors that should be considered in determining not to name an individual are: (i) The distribution or accrual of an unusually large amount of cash compensation (such as a bonus or commission) that is not part of a recurring arrangement and is unlikely to continue; and (ii) the payment of amounts of cash compensation relating to overseas assignments that may be attributed predominantly to such assignments.

(b)(1) *Compensation pursuant to plans.* Describe briefly all plans, pursuant to which cash or non-cash compensation was paid or distributed during the last fiscal year, or is proposed to be paid or distributed in the future, to the named individuals and group specified in paragraph (a) of this section. Information need not be given with respect to any group life, health, hospitalization, medical reimbursement or relocation plans that do not discriminate, in scope, terms, or operation, in favor of officers or directors of the registrant and that are available generally to all salaried employees. The description of each plan shall include the following, except that the description of any defined benefit or actuarial plans need not include the information specified in paragraphs (b)(1)(vi) and (b)(1)(vii) of this section and the description of any stock option and stock appreciation right plan need not include the information specified in paragraph (b)(1)(vii) of this section:

(i) A summary of how the plan operates and who is covered by the plan;

(ii) The criteria used to determine amounts payable, including any performance formula or measure;

(iii) The time periods over which the measurement of benefits will be determined;

(iv) Payment schedules;

(v) Any recent material amendments to the plan;

(vi) Amounts paid or distributed pursuant to the plan to the named individuals and the group during the last fiscal year less any amount relating to the same plan which previously has been disclosed as accrued pursuant to paragraph (b)(1)(vii) of this section or a predecessor provision; and

(vii) Amounts accrued pursuant to the plan for the accounts of the named individuals and group during the last fiscal year, the distribution or unconditional vesting of which are not subject to future events.

(2) *Pension table.* As to defined benefit and actuarial plans, other than any defined benefit or actuarial plan under which benefits are not determined primarily by final compensation (or average final compensation) and years of service, include, as the payment schedule required by paragraph (b)(1)(iv) of this section, a separate Pension Table showing estimated annual benefits payable upon retirement (including amounts attributable to any defined benefit supplementary or excess pension award plans) to persons in specified compensation and years-of-service classifications. In addition, in

furnishing the information required by paragraphs (b)(1) (i)–(v) of this section, include:

(i) The compensation covered by the plan, including the relationship of such covered compensation to the compensation reported in the Cash Compensation Table pursuant to paragraph (a) of this section, and state the current compensation covered by the plan for any individuals named in the Cash Compensation Table whose covered compensation differs substantially (by more than 10 percent) from that set forth in the Cash Compensation Table;

(ii) The estimated credited years of service for each of the individuals named in the Cash Compensation Table; and

(iii) A statement as to the basis upon which benefits are computed (*e.g.*, straight life annuity amounts) and whether or not the benefits listed in the Pension Table are subject to any deduction for Social Security or other offset amounts.

EXAMPLE OF PENSION TABLE

Remuneration	Years of service				
	15	20	25	30	35
125,000	xxx	xxx	xxx	xxx	xxx
150,000	xxx	xxx	xxx	xxx	xxx
175,000	xxx	xxx	xxx	xxx	xxx
200,000	xxx	xxx	xxx	xxx	xxx
225,000	xxx	xxx	xxx	xxx	xxx

(3) *Alternative pension plan disclosure.* In furnishing the information required by paragraphs (b)(1) (i)–(v) of this section with respect to defined benefit or actuarial plans under which benefits are not determined primarily by final compensation (or average final compensation) and years of service, include:

(i) The formula by which benefits are determined; and

(ii) The estimated annual benefits payable upon retirement at normal retirement age for each of the individuals named in the Cash Compensation Table pursuant to paragraph (a) of this section.

(4) *Stock option and stock appreciation right plans.* In addition to providing the information required by paragraphs (b)(1) (i)–(vi) of this section, furnish:

(i) With respect to stock options granted during the last fiscal year: (A) the title and aggregate amount of securities subject to options; (B) the average per share exercise price; and (C) if such option exercise price was less than 100 percent of the market value of the security on the date of grant, such fact and the market price on such date. The title and aggregate amount of such securities subject to options, if any, which are in tandem with stock appreciation rights should be set forth separately.

(ii) With respect to the exercise or realization of options or stock appreciation rights held in tandem with options, state the net value of securities (market value less any exercise price) or cash realized during the last fiscal year.

(iii) With respect to plans pursuant to which stock appreciation rights not in tandem with options were granted during the last fiscal year: (A) the number of rights granted; and (B) the average per share base price thereof.

(iv) With respect to the exercise or realization of stock appreciation rights not in tandem with options, state the net value of the shares (market price) or cash realized during the last fiscal year.

Instructions to Item 402(b)

1. *Format.* With the exception of those pension plans disclosed pursuant to paragraph 402(b)(2), the registrant may use either a narrative, tabular or other format or combination of formats provided the information so disclosed is clear and understandable. Disclosure required by paragraph (b)(2), pertaining to certain defined benefit and actuarial plans, is required to be presented in the Pension Table format set forth in that paragraph.

2. *Cash paid pursuant to plans.* The cash compensation paid pursuant to a plan need not be disclosed as amounts paid or distributed pursuant to paragraph (b)(1)(vi) of this section if such compensation was included in the Cash Compensation Table pursuant to paragraph (a) of this section and a statement to that effect is made. Similarly, the cash compensation deferred under a deferred compensation plan need not be disclosed as amounts accrued pursuant to paragraph (b)(1)(vii) of this section if such compensation was included in the Cash Compensation Table and a statement to that effect is made.

3. *Definition of "plan".* The term "plan" includes, but is not limited to the following: any plan, contract, authorization or arrangement, whether or not set forth in any formal documents, pursuant to which the following may be received: cash, stock, restricted stock, phantom stock, stock options, stock appreciation rights, stock options in tandem with stock appreciation rights, warrants, convertible securities, performance units and performance shares. A plan may be applicable to one person.

4. *Pension levels.* Compensation set forth in the Pension Table pursuant to paragraph (b)(2) of this section shall allow for reasonable increases in existing compensation levels; alternatively, registrants may present as the highest compensation level in the Pension Table an amount equal to 120 percent of the amount of covered compensation of the most highly compensated individual named in the Cash Compensation Table pursuant to paragraph (a) of this section.

5. *Definition of "normal retirement age".* The term "normal retirement age" means normal retirement age as defined in a pension or similar plan or, if not defined therein, the earliest time at which a participant may retire without any benefit reduction because of age.

(c) *Other Compensation.* Describe, stating amounts, any other compensation not covered by paragraphs (a) or (b) of this section that was paid or distributed during the last fiscal year to the named individuals and group specified in paragraph (a) of this section unless:

(1) With respect to any named individual, the aggregate amount of such other compensation is the lesser of $25,000 or 10 percent of the compensation reported in the Cash Compensation Table for such person pursuant to paragraph (a) of this section, or

(2) With respect to the group, the aggregate amount of such other compensation is the lesser of $25,000 times the number of persons in the group or 10 percent of the compensation reported in the Cash Compensation Table for the group pursuant to paragraph (a) of this section and a statement to that effect is made.

Instructions to Item 402(c)

1. *Scope.* Compensation to be disclosed pursuant to this paragraph may include, amoung other things: (a) personal benefits or; (b) securities or property that were paid or distributed other than pursuant to a plan. It does not, in any event, include cash, which is to be disclosed pursuant to either paragraph (a) or (b).

2. *Threshold.* If the amount of other compensation for a named individual or the group exceeds the established thresholds, the entire amount of such other compensation must be disclosed pursuant to this paragraph.

3. *Valuation.* Compensation within paragraph (c) shall be valued on the basis of the registrant's and subsidiaries' aggregate incremental cost.

(d) *Compensation of directors.*

(1) *Standard arrangements.* Describe any standard arrangement, stating amounts, pursuant to which directors of the registrant are compensated for all services as a director, including any additional amounts payable for committee participation or special assignments.

(2) *Other arrangements.* Describe any other arrangements pursuant to which any director of the registrant was compensated during the registrant's last fiscal year for services as a director, stating the amount paid and the name of the director.

(e) *Termination of Employment and Change of Control Arrangement.*

Describe any compensatory plan or arrangement, including payments to be received from the registrant, with respect to any individual named in the Cash Compansation Table pursuant to paragraph (a) of this section for the latest or next preceding fiscal year if such a plan or arrangement results or will result from the resignation, retirement or any other termination of such individual's employment with the registrant and its subsidiaries or from a change in control of the registrant to or a change in the individual's responsibilities following a change in control and the amount involved, including all periodic payments or installments, exceeds $60,000.

General Instructions to Item 402

1. *Foreign private issuers.* A non-Canadian foreign private issuer may respond to all of Item 402 by indicating the aggregate payments or benefits paid or to be paid to all executive officers as a group unless such registrants disclose to their security holders or otherwise make public the information specified in this section for individually named executive officers, in which case such information also shall be disclosed.

2. *Transactions with third parties.* This section includes transactions between the registrant and a third party where the primary purpose of the transaction is to furnish compensation to any named individual or the group specified in paragraph (a) of this section. No information need be given in response to any paragraph of this section as to any such transaction if the transaction has been reported in response to Item 404 of Regulation S–K (§ 229.404 of this chapter).

3. *Exclusions.* No information need be given pursuant to this Item with respect to interest on deferred compensation provided that the rate of interest does not exceed prevailing market interest rates either: (1) At the time the interest is accrued or (2) at the time the plan pursuant to which the compensation is deferred was established. Similarly, dividends awarded on restricted stock need not be disclosed provided that the restricted stock is not of a particular class available only to certain employees on a discriminatory basis.

§ 229.404 [Amended]

2. By removing the word "remuneration" in two places in paragraph 1 in the Instructions to § 229.404 and inserting in those places the word "compensation".

§ 229.601 [Amended]

3. By removing the word "remunerative" twice in paragraph (b)(10)(iii)(A), once in the introductory sentence to paragraph (b)(10)(iii)(B), once in paragraph (b)(10)(iii)(B)(*4*), twice in paragraph (b)(10)(iii)(B)(*5*), and once in paragraph (b)(10)(iii)(B)(*6*) of § 229.601 and inserting in those places the word "compensatory." In addition, the Instruction to paragraph (b)(10)(iii)(B) is amended by removing the word "remuneration" and inserting in its place the word "compensation."

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

§ 230.610a [Amended]

4. By removing the word "remuneration" twice in paragraph (10)(b) of § 230.610a and inserting in those places the word "compensation."

PART 231—INTERPRETIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

5. By removing Releases Nos. 5856, 5904, 6159 and 6166.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

§ 239.11 [Amended]

6. By removing the words "management remuneration" in Part 1, Item 11(K) of § 239.11 and inserting in their place the words "executive compensation."

§ 239.18 [Amended]

7. By removing the word "remuneration" once in Item 3(b)(4), and once in Item 24(b)(6) of § 239.18 and inserting in those places the word "compensation"; and by removing the words "management remuneration" in Item 22 of § 239.18 and inserting in their place the words "executive compensation."

§ 239.28 [Amended]

8. By revising Item 20 of Form S–18, § 239.28, to read as follows:

Item 20. Executive Compensation

(a)(1) *Cash compensation.* Furnish, in substantially the tabular form specified, all cash compensation paid to the following persons through the latest practicable date for services rendered in all capacities to the registrant and its subsidiaries during the registrant's last fiscal year.

(i) Each of the registrant's five most highly compensated executive officers whose cash compensation required to be disclosed pursuant to this paragraph exceeds $60,000, naming each person; and

(ii) All executive officers as a group, stating the number of persons in the group without naming them.

CASH COMPENSATION TABLE

(A)	(B)	(C)
Name of individual or number in group.	Capacities in which served.	Cash compensation.

Instructions. 1. The Cash Compensation Table shall include: (i) All cash bonuses to be paid for services rendered during the last fiscal year unless such amounts have not been allocated at such time as the registration statement is filed; and (ii) all compensation that would have been paid in cash but for the fact the payment of such compensation was deferred. 2. Paragraph (a) applies to any person who was an executive officer of the registrant at any time during the period specified. However, information need not be given for any portion of the period during which such person was not an executive officer of the registrant, provided a statement to that effect is made.

(b)(1) *Compensation pursuant to plans.* Describe briefly all plans, pursuant to which cash or non-cash compensation was paid or distributed during the last fiscal year, stating such amounts, and all plans pursuant to which cash or non-cash is proposed to be paid or distributed in the future, to the named individuals and group specified in paragraph (a) of this section. Information need not be given with respect to any group life, health, hospitalization, medical reimbursement or relocation plans that do not discriminate, in scope, terms, or operation in favor of officers or directors of the registrant and that are available generally to all salaried employees. Information relating to pension or retirement benefits need not be disclosed if the amounts to be paid are computed on an actuarial basis under any plan which provides for fixed benefits in the event of retirement at a specified age or after a specified number of years of service.

(2) *Stock option plans.* In addition to providing the information required by paragraph (b)(1) of this section, furnish:

(i) With respect to stock options granted during the last fiscal year: (A) The title and aggregate amount of securities subject to options; (B) the average per share exercise price; and (C) if such option exercise price was less than 100 percent of the market value of the security on the date of grant, such fact and the market price on such date.

(ii) With respect to stock options exercised during the last fiscal year, regardless of the year such options were granted, the net value realized upon such exercise, calculated by subtracting the exercise price from the market value.

(c) *Other compensation.* Describe, stating amounts, any other compensation not covered by paragraph (a) or (b) of this section, such as personal benefits, securities or property, that was paid or distributed during the last fiscal year to the named individuals and group specified in paragraph (a) of this section unless:

(1) With respect to any named individual, the aggregate amount of such other compensation is the lesser of $25,000 or 10 percent of the compensation reported in the

Cash Compensation Table of such person pursuant to paragraph (a) of this section or

(2) With respect to the group, the aggregate amount of such other compensation is the lesser of $25,000 times the number of persons in the group or 10 percent of the compensation reported in the Cash Compensation Table for the group pursuant to paragraph (a) of this section and a statement to that effect is made.

Instruction. Compensation within paragraph (c) shall be valued on the basis of the registrant's and subsidiaries' aggregate incremental cost.

(d) *Compensation of directors.* Describe briefly, stating amounts, all compensation received by directors of the registrant for all services as a director.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

§ 240.12g3-2 [Amended]

9. By removing the word "remuneration" from paragraph (b)(3) of § 240.12g3-2 and inserting in its place the word "compensation."

10. By revising paragraphs (b) and (d) and Instructions 1 and 3 of Item 9; paragraphs (b) and (d) and Instruction 1 of Item 10; and paragraphs (b) and (c) and Instruction 1 of Item 11 of § 240.14a-101 to read as follows:

§ 240.14a-101 Schedule 14A—Information required in proxy statement.

* * * * *

Item 9. Bonus, profit sharing and other compensation plans. * * *

(b) State separately the amounts which would have been distributable under the plan during the last fiscal year of the issuer to (1) all current executive officers as a group, (2) all other current officers and directors as a group, and (3) all employees if the plan has been in effect.

* * * * *

(d) Furnish such information, in addition to that required by this item and Item 402 of Regulation S-K (§ 229.402 of this chapter), as may be necessary to describe adequately the provisions already made pursuant to all bonus, profit sharing, pension, retirement, stock option, stock purchase, deferred compensation, or other compensation or incentive plans, now in effect, or in effect within the past five years, for: (1) Each executive officer named in answer to Item 402(a) of Regulation S-K (§ 229.402(a) of this chapter) who may participate in the plan to be acted upon, (2) all current executive officers of the issuer as a group, if any executive officers may participate in the plan, (3) all other current officers and directors of the issuer as a group, if any other officer and director may participate in the plan, and (iv) all employees, if employees may participate in the plan.

* * * * *

Instructions. 1. The term "plan" as used in this item means any plan as defined in Instruction 3 to Item 402(b) of Regulation S-K (§ 229.402(b) of this chapter).

* * * * *

3. The following instructions shall apply to paragraph (d):

(a) Information need only be given with respect to benefits received or set aside within the past five years.

(b) Information need not be included as to payments made for, or benefits to be received from, group life or accident insurance, group hospitalization, group relocation or similar group payments or benefits.

(c) If action is to be taken with respect to any plan in which directors or executive officer may participate, furnish the following information for the last five fiscal years of the issuer and any period subsequent to the end of the latest such fiscal year in aggregate amounts for the entire period for each such person and group: (1) As to options granted during the specified period, state the title and aggregate amount of securities subject to options, the average per share exercise price and, if the option price was less than 100 percent of the market value of the security on the date of the grant, such fact and the market price on such date (The title and aggregate amount of such securities subject to options, if any, which are in tandem with stock appreciation rights should be set forth separately); and (2) As to the exercise or realization of options or stock appreciation rights held in tandem with options granted during the specified period or prior thereto, state the net value of securities (market value less any exercise price) or cash realized during the specified period. If any named person, or any other director or executive officer, purchased securities through the exercise of options during such period, state the aggregate amount of securities of that class sold during the period by such named person and by such named person and such other directors and executive officers as a group. If other officers or employees may participate in the plan to be acted upon, state the aggregate amount of securities called for by all options granted to such other officers or employees, respectively, during the five-year period and, if the options were other than for "qualified" stock options, incentive stock options or options granted pursuant to an "employee stock purchase plan", as the quoted terms are defined in Sections 422 through 423 of the Internal Revenue Code, state that fact and the weighted average option price per share.

* * * * *

Item 10. Pension and retirement plans. * * *

(b) State (1) The approximate total amount necessary to fund the plan with respect to past services, the period over which such amount is to be paid and the estimated annual payments necessary to pay the total amount over such period; (2) the estimated annual payment to be made with respect to current services; and (3) the amount of such annual payments to be made for the benefit of (i) executive officers, (ii) all other officers and directors, and (iii) employees.

* * * * *

(d) Furnish such information, in addition to that required by this item and Item 402 of Regulation S-K (§ 229.402 of this chapter), as may be necessary to describe adequately the provisions already made pursuant to all bonus, profit sharing, pension, retirement, stock option, stock purchase, deferred compensation or other compensation or incentive plans, now in effect or in effect within the past five years, for (1) Each executive officer named in answer to Item 402(a) of Regulation S-K (§229.402(a) of this chapter) who may participate in the plan to be acted upon; (2) all current executive officers of the issuer as a group, if executive officer may participate in the plan; (3) all other current officers and directors of the issuer as a group, if any other officer or director may participate in the plan; and (4) all employees, if employees may participate in the plan.

* * * * *

Instructions 1. The term "plan" as used in this item means any plan as defined in Instruction 3 to Item 402(b) of Regulation S-K (§ 229.402(b) of this chapter). Instruction 2 to Item 9 shall apply to this item.

* * * * *

Item 11. Options, warrants or rights. * * *

* * * * *

(b) State separately the amount of options, warrants, or rights received or to be received by the following persons, naming each such person: (1) Each executive officer named in answer to Item 402(a) of Regulation S-K (§ 229.402(a) of this chapter); (2) each nominee for election as a director; (3) each associate of such directors, executive officers or nominees; and (4) each other person who received or is to receive 5 percent of such options, warrants or rights. State also the total amount of such options, warrants or rights received or to be received by all directors and executive officers of the issuer as a group, without naming them.

(c) Furnish such information, in addition to that required by this item and Item 402 of Regulation S-K (§ 229.402 of this chapter), as may be necessary to describe adequately the provisions already made pursuant to all bonus, profit sharing, pension, retirement, stock option, stock purchase, deferred compensation, or other compensation or incentive plans, now in effect or in effect within the past five years, for (1) each executive officer named in answer to Item 402(a) of Regulation S-K (§ 229.402(a)of this chapter) who may participate in the plan to be acted upon; (2) all current executive officers of the issuer as a group, if any executive officer may participate in the plan; (3) all other current officers and directors of the issuer as a group, if any other officer or director may participate in the plan; and (4) all employees, if employees may participate in the plan.

Instructions 1. The term "plan" as used in this item means any plan as defined in Instruction 3 to Item 402(b) of Regulation S-K (§ 229.402(b) of this chapter).

§ 240.14a-101 [Amended]

11. By removing the word "remuneration" in the title of Item 7 and once in clause (ii) of Item 7, § 240.14a-101, and by inserting in those places the word "compensation."

§ 240.210 [Amended]

12. By removing the phrase "management remuneration" from the title of Item 6 to Form 10, § 240.210, and inserting in its place the phrase "executive compensation."

PART 241—INTERPRETIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND RULES AND REGULATIONS THEREUNDER

13. By removing Release Nos. 13872, 5904, 16419, 18302.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

§ 249.220f [Amended]

14. By removing the word "remuneration" in the title and text of paragraphs (a) and (a)2 of Item 11 to Form 20–F, § 249.220f, and by inserting in those places the word "compensation."

§ 249.310 [Amended]

15. By removing the phrase "management remuneration" from the title of Part III to Item 11 of Form 10–K, § 249.310, and by inserting in its place the phrase "executive compensation."

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

§ 270.30d–1 [Amended]

16. By removing the word "remuneration" from paragraph (c)(1) of § 270.30d–1 and inserting in its place the word "compensation."

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

§ 274.11 [Amended]

17. By removing the word "remuneration" once in the title and twice in the table of Item 11 of Form N–1, § 274.11, and inserting in their place the word "compensation."

§ 274.14 [Amended]

18. By removing the word "remuneration" in the title of Item 28, in the title preceding Item 34, in the title of Item 36, in paragraphs (a), (a)(2), and (a)(3) of Item 36, in column (B) of the chart in Item 36, three times in Instruction 1, twice in Instruction 2 and once in Instruction 4 to Item 36, once in paragraph (c) of Item 36, in the title, text and table in Item 37 and twice in the text of Item 38, all of Form N–8B–4, § 274.14, and inserting in their place the word "compensation."

§ 274.101 [Amended]

19. By removing the word "remuneration" in the title of Item 10 of Form N–1R, twice in the text of paragraph (a), once each in columns (A), (C) and (D) of the table to paragraph (a) of Item 10, once in paragraph (b), once each in columns (A) and (B) of the table to paragraph (b) of Item 10, once in paragraph (C) and once each in columns (A) and (B) of the table to paragraph (C) of Item 10, once in the title to the Instruction to Item 10, twice in the fourth paragraph and once in the fifth paragraph to the Instruction to Item 10, once in the title to Item 11 of Form N–1R, and once in the Instruction to Item 11, § 274.101, and inserting in their place the word "compensation."

By the Commission.

George A. Fitzsimmons,

Secretary.

September 23, 1983.

Appendix—Summary of Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding the revisions to Form S–18 proposed herein.

The analysis notes that the Commission adopted Form S–18 to be used by certain smaller companies in an effort to alleviate some of the cost and compliance burdens traditionally associated with registration on Form S–1, the standard registration form. The Commission took this step in recognition of its statutory authority to vary disclosure requirements depending upon the issuer and other considerations, and with the designated purpose of facilitating small business capital formation.

Specifically, as compared to Form S–1, Form S–18 provides for reduced narrative disclosure requirements, reduced and less burdensome financial statement requirements, and permits regional filing and processing of the registration statement, all of which result in a more timely and less expensive registration process for smaller issuers seeking access to the public capital markets.

In order to further reduce the expenses incurred by small issuers registering their securities under the Securities Act, the Commission permits registrants which filed on Form S–18, and thereby became subject to section 15(d) of the Exchange Act, to include the Form's simplified financial statements and narrative disclosures in their initial annual report filed with the Commission.

The Commission believes these steps have served to alleviate the burdens on small business consistent with its statutory mandate to protect investors and foster continued confidence in the securities markets.

The amendments adopted on a conditional basis herein are designed to conform the disclosure of executive compensation in Form S–18 to that required by other registration forms, while preserving the simplified disclosure format of Form S–18.

A copy of the Initial Regulatory Flexibility Analysis may by obtained by contacting Elliot M. Pinta, (202) 272–2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549.

[FR Doc. 83–26657 Filed 9–28–83; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 125, 225, and 356

[Docket No. RM83–40–000; Order No. 335]

Revisions to Regulations on Retention of Records by Natural Gas Companies, Public Utilities, Licensees, and Oil Pipeline Companies

Issued: September 27, 1983.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations on retention of records by public utilities, licensees, natural gas companies, and oil pipeline companies ("regulated companies"). Most importantly, these amendments eliminate many categories of records from the schedules of records to be retained. The Commission is also making other more minor changes to its regulations that clarify, update, and eliminate unnecessary burden on regulated companies. This rule is part of the Commission's ongoing program to reduce and eliminate burdensome and unnecessary requirements and reduces by about 35 percent the burden on regulated companies of maintaining records under the Commission's regulations.

EFFECTIVE DATE: November 28 1983.

FOR FURTHER INFORMATION CONTACT:
Kenneth J. Malloy, Rulemaking and Legislative Analysis Section, Office of the General Counsel, 825 North Capitol Street, NE., Room 8602–A, Washington, D.C. 20426, (202) 357–8033
Elaine Dawson, Office of Chief Accountant, 825 North Capitol Street, NE., Room 610 RB, Washington, D.C. 20426, (202) 376–9782

SUPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission (Commission) is issuing a final rule amending its regulations on retention of records by public utilities, licensees, natural gas companies, and oil pipeline companies ("regulated companies"). Most importantly, these amendments eliminate many categories of records from the schedules of records to be retained. The Commission is also adopting other changes to its regulations that clarify, update, and reduce the record retention requirements for regulated companies.

This final rule is a key part of the Commission's ongoing program to reduce record retention requirements and eliminate burdensome and unnecessary requirements. This rule reduces by about 35 percent the burden on regulated companies of maintaining records under the Commission's regulations.

II. Background

A. *Electric and Gas*

Both the Federal Power Act (section 301, 16 U.S.C. 825(a) (1976)) and the Natural Gas Act (section 8, 15 U.S.C. 717g(a) (1976)) require regulated companies to keep such records as the Commission may prescribe "as necessary or appropriate for purposes of administration" of these acts.[1] In 1972, the Commission established a comprehensive scheme of record retention regulations applicable to electric utilities and hydropower licensees (Part 125) and natural gas companies (Part 225).[2] In promulgating this scheme, the Commission's goal was to develop a comprehensive regulatory system to assist regulated companies in meeting their management needs and to allow companies to satisfy more easily the requirements of numerous regulatory agencies.[3]

Accordingly, this scheme coordinated the record retention requirements of this Commission, the Securities and Exchange Commission (SEC), the Nuclear Regulatory Commission (NRC), the Internal Revenue Service (IRS), and state commissions.

B. *Oil Pipelines*

In 1977, the Commission assumed jurisdiction over the establishment of rates or charges for the transportation of oil by pipelines.[4] Section 20 of the Interstate Commerce Act, 49 U.S.C. 20 (1976), requires oil pipeline companies to keep records that the Commission determines are necessary to effectively regulate those companies. The record retention regulations applicable to oil pipelines were transferred to the Commission from the Interstate Commerce Commission by section 705(a) of the Department of Energy Organization Act, 42 U.S.C. 7295 (Supp. V 1981).

The Commission's policies for exercising its jurisdiction over oil pipelines are dependent on the ultimate disposition of the issues in *Williams Pipeline Company*, Docket No. OR79–1 (*Williams*), by the federal courts. Hence, the Commission is for the most part eliminating only those ICC-created record retention requirements that are not applicable to the regulation of oil pipelines, and is otherwise maintaining the status quo. As the Commission gains more experience in oil pipeline matters, it will re-examine the need for the remaining requirements as part of the ongoing program to eliminate reporting and recordkeeping requirements that are not necessary to the Commission's regulatory responsibilities.

C. *Other Regulatory Considerations*

Since the promulgation of the comprehensive record retention regulations in 1972, Congress enacted the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520 (Supp. V 1981). That Act expresses the intent of Congress to minimize the public's reporting burden. The General Accounting Office (GAO) reviewed the progress of five federal independent regulatory agencies, including this Commission, in minimizing the public's reporting burden under the Paperwork Reduction Act. GAO published its Report on July 7, 1981,[5] and concluded that the independent agencies could further reduce the paperwork burden on industry. GAO recommended that the independent agencies increase the effort and attention given to record retention programs, especially to revising both existing record schedules and retention periods to reflect the agencies' current needs in a clear and unambiguous manner.

D. *Notice of Proposed Rulemaking*

In light of the Paperwork Reduction Act and the recommendations of GAO, the Commission reconsidered its original comprehensive approach and issued a notice of proposed rulemaking on March 22, 1983, 48 FR 12,722 (March 28, 1983). In that proposal, the Commission examined its record retention requirements to identify those record descriptions and retention periods that were vague and ambiguous, and to identify those records which the Commission did not currently need to carry out its regulatory responsibilities.

The Commission received twenty-eight comments on its proposed rulemaking—three from trade associations, fifteen from electric utilities, five from natural gas companies, four from oil pipeline companies, and one from an employee of an electric company. These comments have been considered during preparation of this final rule. All comments were supportive of the Commission's proposals, noting that some or all of these proposals would, if promulgated, reduce the costs of both administrative personnel and warehousing of records. Many commenters noted that these costs savings would be passed on to consumers in the form of lower rates.

III. Discussion

The Commission is adopting four types of changes to its current regulations. First, and of major importance, the Commission is eliminating many categories from the schedules of records to be retained. Second, the Commission is shortening

[1] Section 402(a)(2) of the Department of Energy Organization Act transfers these Federal Power Act and Natural Gas Act responsibilities from the Federal Power Commission to the Federal Energy Regulatory Commission. 42 U.S.C. 7172(a)(2) (Supp. V 1981).

[2] FPC Order No. 450, Docket No. R429, issued March 14, 1972.

[3] The record retention schedules were recommended by a task force whose members were drawn from the regulated entities. *See* American Gas Association and Edison Electric Institute (AGA/EEI) *Record Retention Task Force Report* (issued March 14, 1972). These recommendations were promulgated by the Commission without substantive changes.

[4] Jurisdiction under the Interstate Commerce Act over the establishment of rates or charges for the transportation of oil by pipelines and the establishment of valuations for pipelines was transferred from the Interstate Commerce Commission to the Federal Energy Regulatory Commission pursuant to sections 306 and 402 of the Department of Energy Organization Act, 42 U.S.C. 7155 and 7172 (Supp. V 1981), and Executive Order No. 12,009, 3 CFR 142 (1978).

[5] Report to Director, Office of Management and Budget, *Independent Regulatory Agencies Can Reduce Paperwork Burden on Industry*, No. B–182087 (July 7, 1981).

the retention periods of several categories of records. Third, the rule specifies requirements for ensuring the integrity of all records generated by a computer. Fourth, several descriptions of records are being modified to define more precisely the records that must be retained.[6]

A. Categories of Records Eliminated

When the Commission established its record retention schedules in 1972, it sought to coordinate the record retention requirements of federal and state regulatory agencies. Consequently, these schedules now include records which *this* Commission does not need to fulfill its regulatory responsibilities. Contrary to its philosophy in 1972, the Commission how believes that its schedules of records should include only records for which it can demonstrate a regulatory need. Accordingly, the Commission is eliminating all or part of over 100 categories of records from its retention schedules.

Many commenters supported the Commission's proposal to eliminate many categories of records. Several commenters, however, were concerned with the Commission's change in philosophy, noting that the elimination of these categories of records would require each company individually to determine the record retention requirements of all state and federal agencies that have jurisdiction over the company. Additionally, several commenters noted that there would not be much savings in the Commission's elimination of record retention categories because many other agencies already require these companies to retain records that the Commission proposes to eliminate from its retention schedule. Some commenters also noted that there would be a significant expense in changing the current management system for record retention to comport with the Commission's new, more limited schedules of records and retention periods. To alleviate this burden, one commenter requested that the Commission not eliminate categories of records, but rather eliminate only the retention periods and substitute a notation that a company can destroy the record at its option. Two commenters suggested that it may be better to include record categories with shorter retention periods rather than eliminate them entirely from the schedule of records.

The Commission acknowledges that regulated companies will incur some initial, administrative expenses in adjusting to the new, more limited record retention schedules of the Commission. These expenses will not, however, be recurring in nature and the overall benefits of this reduction more than outweigh this initial burden. The Commission also believes that it is incumbent upon companies themselves to be aware of and to comply with the record retention requirements of other state and federal regulatory agencies, regardless of the Commission's record retention requirements.

To the extent that administrative problems would be caused by the loss of a comprehensive schedule of records, the Commission notes that the National Association of Regulatory Utility Commissioners (NARUC) has a schedule of retention periods and records required by many state commissions that is almost identical to the Commission's former schedule of records. Companies should consider using the NARUC guidelines and requirements to accommodate their need for a comprehensive schedule of records.

In order to facilitate the use of the NARUC schedule of records both generally and also particularly by those companies that have arranged their schedules of records by using the numerical designations found in the Commission's record retention schedules, the Commission will not, as proposed, renumber the schedules of records for electric utilities and natural gas companies to reflect the elimination of many categories of records. Instead, the final rule adopts the editorial device of "reserving" categories that are being eliminated. Thus, no renumbering occurs and records that are still being required by the Commission will continue to have the same numerical designation now found in the Commission's regulations.

The list below shows the categories of records which the Commission is eliminating entirely from both Parts 125 and 225:

Item No. and Category of Record

1.—Capital stock records
2.—Proxies and voting lists
3.—(b) of Reports to stock holders
4.—Debt security records
5.—Filings with and authorizations by regulatory agencies
6.—(b)(1)–(4), (c), and (d) of Organizational documents
7.—(c)–(f) of Contracts and agreements
9.—(a) of Automatic data processing records
12.—(c) and (d) of Journal vouchers and Journal entries
16.—Accounts receivable
17.—Records of securities owned
18.—Payroll records
19.—Assignments, attachments and garnishments
20.—(b) and (d)–(f) of Insurance records
21.—Injuries and damages
24.—Customers' service
25.—Records of auxiliary and other operations
27.—Personnel records
28.—Employees' benefit and pension records
29.—Instructions to employees and others
35.—Production maps and reproductions thereof
36.—(a)(2) of The original or reproductions of engineering records, drawings and other supporting data for proposed as-constructed utility facilities
40.—(c) of Procurement
41.—(b) of Material ledgers
42.—(a), (b), (d) and (e) of Materials and supplies received and issued
43.—(c) of Records of sale of scrap and materials and supplies
44.—Inventories of materials and supplies
45.—(a)–(g) of Customers' service applications and contracts
46.—(b) of Rate schedules
47.—Customers' guarantee deposits
48.—Meter reading sheets and records
50.—(b)–(d) of Miscellaneous billing data
52.—Customers' ledgers and other records used in lieu thereof
53.—Merchandise sales—Accounting and collecting
54.—Collection reports and records
55.—Customers' account adjustments
56.—Uncollectible accounts and customers credit records
58.—(c)–(f) of Statements of funds and deposits
59.—(a), (b), (d), (e) and (g) of Records of deposits with banks and others
61.—(c) of Statistics
63.—Correspondence
66.—(b) of Other miscellaneous records

The list below shows the categories of records which the Commission is eliminating entirely from Part 125 only:

Item No. and Category of Record

22.1.—(a), (b), (g), and (k) of Production-Electric (less nuclear).

[6] The Commission has developed three new schedules of records—one each for electric, gas, and oil—that show how the changes made by this rule will be integrated into the current schedules. These new schedules will not be published in the **Federal Register** before the time when they are codified in the *Code of Federal Regulations*. However, the new schedules can be obtained through the Commission's Division of Public Information, 825 North Capitol Street, NE., Room 1000, Washington, D.C. 20426; telephone (202) 357-8118. Refer to the "Record Retention Schedules" and the relevent Part (Part 125—Electric, Part 225—Gas, and Part 356—Oil) when making inquires.

23.—(c)–(m), and (p) of Transmission and distribution-Electric
60.—Records of receipts and disbursements
65.—(b), (c)(3), and (c)(9) of Reports to Federal and State regulatory commissions

The Commission is also eliminating from Part 125 nuclear production records (Item 22.2). The Nuclear Regulatory Commission (NRC) requires most of these records to be kept for NRC purposes. In light of the particular safety importance of these records, the Commission is including under item 22.2 a reference to the NRC's record retention regulations even though the Commission would no longer itself require retention of nuclear production safety records.

The list below shows the categories of records which the Commission is eliminating entirely from Part 225 only:

Item No. and Category of Record

22.—(a), (c)–(e), (j), (l), (m), and (o)–(r) of Production-Gas
23.—(c)–(i), and (m) of Transmission and distribution-Gas
23.1.—(c) of Underground storage of natural gas
37.—(b) of Contracts and other agreements relating to natural gas company records
65.—(b), (c)(3), (c)(6), and (c)(9) of Reports to Federal and State regulatory commissions

The list below shows the categories of records which the Commission is eliminating entirely from Part 356:

A. Corporate and General

3. Corporate election
4. (e) of Titles, franchises and authorities.
5. Annual reports or statements to stockholders, file copies of
6. (d)–(f) of Contracts and agreements

B. Treasury

1. Capital stock records
2. (b)–(g) of Long-term debt records
3. Filings with an authorization by regulatory agencies
4. Records of securities owned, in treasury, or held by custodians, detailed ledgers and journals, or their equivalent
5. Retired securities
6. Records of funds and deposits
7. Records of foreign exchange or commercial paper purchased

C. Financial and Accounting

3. Cash books
4. (c) and (d) of Vouchers
5. (b)–(d) of Accounts receivable

D. Property and Equipment

Note.

1. (g) and (j) of Property records
2. (b) of Engineering records

E. Personnel and payroll

1. Personnel records
2. (c)–(j) of Payroll records

F. Insurance and Claims investigation

G. Taxes

2. Summary of taxes paid
3. Filing with taxing authorities to qualify employee benefit plans

H. Purchases and Stores

1. (b) of Material ledger
2. (b) and (c) of Inventories
3. Purchases and sales
4. Materials and supplies received and issued

I. Shipping and Agency Documents

J. Transportation

1.–11. Transportation other than oil

Item J.12 covers records relating to marine equipment, railroads and oil pipelines. The Commission proposes to eliminate references to marine equipment and railroads but to retain the part of item J.12 that covers oil pipelines, except for sub-items (c) and (h).

K. Tariffs and Rates

2. All other copies of tariffs, classifications, division sheets and circular referred to in item 1 above.
6. Contracts and minimum rate schedules of contract motor carriers.

L. Reports and Statistics

1. (b) and (c) of Reports to Federal Energy Regulatory Commission and other regulatory bodies.
2.–5. of other reports.

M. Miscellaneous

In addition, the Commission has renumbered the schedules of records to be retained by oil pipeline companies to take account of the changes listed above to permit sequential numbering of all records, rather than individual numbering within each category of record.

B. Retention Periods Shortened

1. "Life of the Corporation" Retention Period

The Commission now uses the term "life of the corporation" as the period of retention for many records. This term is indefinite and probably results in records being kept after they cease to be of use to the Commission. Consequently, the Commission proposed eliminating all references to "life of the corporation." In its place, the Commission suggested substitution of specific retention periods that are more closely tailored to the actual needs of the Commission. Most commenters support the Commission's proposals with minor modifications. Accordingly, the Commission is adopting the following changes:

(a) Some records are continuously useful to the Commission for both periodic audits and documentation of a company's rate base. For these documents, the Commission proposed a "50 year" retention period. Fifty years ensures the availability of these records for auditing and documentation purposes, and removes ambiguity and vagueness on when these documents may eventually be retired. One commenter noted, correctly in the Commission's view, that retention of these types of records is not necessary if a corporation terminates its existence earlier than fifty years. Accordingly, the Commission is amending this retention period to "50 years or termination of the corporation's existence, whichever occurs first." This retention period will be applied to Item 6.(a) (minute books) of §§ 125.3 and 225.3.

(b) Some records are required in individual rate cases. For these records, the Commission is adopting a retention period of "six years after a final non-appealable order." Six years is sufficient time to complete the one audit necessary to ensure compliance with a specific final order. The "six years after a final non-appealable order" retention period will be applied to Item 6.(b)(5) (orders of regulatory commissions) of §§ 125.3 and 225.3.

(c) Some records facilitate a Commission audit conducted to ensure that the Commission's regulatory decisions ar properly implemented. After an on-site audit is completed, the Commission's staff meets with company officials to discuss the results of the audit. This meeting is called an exit conference. After the exit conference, an audit report is sent to the company when issues raised by the audit are resolved. Under the final rule, records needed for audits will be "retained until receipt of FERC audit report or two years after auditor's exit conference, whichever occurs first." Two years is sufficient time to permit the Commission to take any further action necessary in light of the audit results. An audit report, on the other hand, signifies that no further action by the Commission is necessary and, therefore, there is no need for the record. This retention period will be applied to Item 3.(a) (stockholder reports) of §§ 125.3 and 225.3.

One commenter suggested retention periods be keyed to a fixed length of

time (*i.e.* six years) rather than described as a conditional retention period (*i.e.* until receipt of an audit report), noting that in the later case there is room for interpretive ambiguity. The Commission has not adopted the approach urged by this comment because the usefulness of certain records is keyed to specific events rather than to a finite time period. Keying the retention period to a finite time period would often result in the records being retained long after they are needed.

(d) Some records relate to the purchase and sale of utility property and plant. For these records, the Commission is adopting a retention period of "10 years after the plant is retired." This information is needed while a plant is active and during two five-year audit cycles after plant retirement. This retention period will be applied to Item 65.(c)(7)–(8) (utility property and plant reports) of §§ 125.3 and 225.3.

(e) Some records contain financial, operating, and statistical reports required by governmental agencies. The Commission proposes to differentiate between reports required by federal agencies and those required by state agencies. For those records required by state agencies, the Commission will require a retention period of "retain as long as the active tariffs or rates are in effect" (Item 65.(a)(2) in §§ 125.3 and 225.3). This period is definite and ensures the records are available for Commission audits. For those records required by federal agencies, the Commission will require that these records be "retained until receipt of FERC audit report or two years after auditor's exit conference, whichever occurs first" (Item 65.(a)(1) of §§ 125.3 and 225.3). Again, two years is sufficient time to permit the Commission to pursue issues raised by the audit, but if the audit report is issued during this two year period, the Commission's need for these records ends.

2. Retention Periods Keyed to the Audit Cycle

Natural gas companies, public utilities, and Commission licensees currently retain certain engineering records until either the records are superseded or six years after the pertinent facility is retired. In addition, these companies retain for 50 years rate sheets, schedules of service, and certain contracts in the event that service is extended. Since these records are used only to facilitate compliance-related audits, the Commission will require that these records be "retained until receipt of FERC audit report or two years after auditor's exit conference, whichever occurs first." This retention period permits the Commission to take action on issues raised by the audit, and allows for the destruction of records when the Commission's need for them ends. This retention period applies to Items 36.(a)(1) (engineering records), 41.(a)(supplies on hand), 45.(h) (contracts for extension), and 46.(a) (rate schedules) of §§ 125.3 and 225.3.[7]

3. Retention Period for Electric Production Records

Currently, both public utilities and licensees must maintain station and system generation reports concerning electric production for 25 years (Item 22.1(e) of § 125.3). To monitor hydroelectric power production adequately, the Commission believes that station and system generation reports are needed for 25 years. However, six years is sufficient for other thermal electric power production since that period would permit at least one audit cycle to ensure compliance with the Commission's regulations and decisions. Therefore, the Commission is requiring that the retention period for these reports on hydroelectric power production remain at 25 years, while the retention period for generation reports concerning steam and other thermal electric power production be changed to six years.

C. Amendments to Record Retention Instructions

The first amendment to the instructions for record retention relates to records generated by computers (sections 125.2(e)(1)(ii) and 225.2(e)(1)(ii)). In lieu of the more elaborate certification procedure normally required for microfilm records, the Commission recently permitted [8] public utilities, licensees, and natural gas companies to establish procedures for ensuring the integrity of computer output microfilm.[9] The Commission believes that it is necessary for *all* computer generated records to be subject to either the certification requirement or the requirement that companies develop and follow standard procedures. The Commission must be assured that computer generated records are true representations of the information stored in a computer.

The Commission proposed, and is now adopting, a requirement that a company must develop written, standard procedures to ensure the integrity of computer records and must furnish the name or title of the official responsible for validating the computer output information (hereinafter "company developed procedures"). The Commission is allowing either the name *or title* of the appropriate company official, rather than requiring only the name of the official. The Commission believes that the burden imposed by this requirement is minor since these types of procedures are already employed by most, if not all, companies that use computers and is less than would be imposed by the more elaborate certification procedures.

Most commenters speaking to this issue are in favor of the Commission's proposal. Commenters request, however, that the Commission clarify several aspects of the proposal. In response to one comment, the Commission has decided that electronic data capture of customer meter readings should be considered as meter reading sheets and records under item 48 of §§ 125.3 and 225.3, rather than as records generated by computer.

Similarly, another commenter notes that the proposal does not define computer generated records and that it is therefore unclear whether the Commission would require that the company developed procedures be followed for word processing, or more generally any records generated by a central computer, mini-computers, word processors, or even electric typewriters. Admittedly, there is no distinct line between those types of computer generated records that must comply with the company developed procedures and those that need not follow those procedures. Some clarification is possible, however. First, the Commission notes that the requirements for computer generated records are only applicable to "official permanent records" generated by computer, and the Commission is adding this limitation to its final rule. Second, the Commission believes that if a company follows "accepted general business practices" in generating a record, then the Commission can be assured of the integrity of the record. Thus, the Commission is amending its proposal to allow accepted general business practices to qualify in lieu of written, standard procedures. With these two clarifications, the Commission believes that it has sufficiently minimized the

[7] The Commission notes, however, that certain records which will affect the determination of amortization reserves of licensed hydropower projects must still be retained until a final Commission adjudication is made. *See* § 125.2(j).

[8] Revisions to the Uniform Systems of Accounts and Regulations Governing the Preservation of Records, 47 FR 42,720 (Sept. 29, 1982) (Order No. 258).

[9] Computer output microfilm is a process in which information stored in a computer can be printed directly on microfilm instead of on paper.

burden on companies for ensuring the integrity of computer generated records. After it develops experience under these requirements, the Commission may reevaluate its rules and require that companies follow the more elaborate certification procedures or it may determine that it is necessary to have less stringent verification standards for computer generated records. In this rule, however the Commission has tried to achieve a balance that accommodates its need for accurate records with the burden it imposes on regulated companies.

Another commenter suggests the Commission define more explicitly the procedures required for compliance with the computer records requirements. The Commission believes as stated above that the normal business practices of regulated companies in records management are such that it is not necessary to design comprehensive regulations beyond the generalized format currently in existence. This final rule does however include a reference to "written standard procedures" and "accepted general business practices" which should give some indication as to what is acceptable. Lastly, in response to one comment, the Commission is adding jacketed microfiche and aperture cards to the Commission's computer record requirements. The Commission believes it is unnecessarily burdensome to require companies to follow the more extensive certification requirements that would otherwise apply to any microfilm record. Accordingly, the Commission regulations have been revised to permit companies to follow the requirements developed for computer generated records for *all* record series produced by the computer, *i.e.*, output paper or microfilm, jacketed microfiche, or aperture cards.

The second change to the Commission's instructions corrects an error in the Commission's regulations. The current instructions applicable to regulated companies state that all film stock must meet the "current specifications of the National Bureau of Standards." Specification for film stock is not established by the National Bureau of Standards, but by the American National Standards Institute. Therefore, the Commission is correcting this error by substituting "American National Standards Institute" for "National Bureau of Standards" in §§ 125.2(g) and 225.2(g).

D. Miscellaneous Proposals

The Commission is amending various descriptions of records or retention periods for either of two reasons. In some cases, only part of a record is needed by the Commission to meet its regulatory responsibilities. In these instances, the description is amended to include only that portion of the record needed by the Commission. In other cases, the current description or retention period is ambiguous and a more precise description is added. The changes discussed below are the same as those proposed by the Commission.

(a) In §§ 125.3 and 225.3, item 41.(a) now requires the retention of "ledger sheets and card records of materials and supplies received, issued, and on hand." Since "ledger sheets" adequately meet the Commission's regulatory needs, the final rule would remove references to "card records."

(b) In §§ 125.3 and 225.3, item 45.(h) now requires the retention of "applications and contracts for extension for which donations or contributions are made by customers or others." The Commission believes that it is not necessary that regulated companies retain applications or contracts for extensions for which *donations* are made. Accordingly, the final rule removes the reference to donations.

(c) In § 356.11, item A.6 (newly renumbered as item 4) requires oil pipeline companies to retain certain contracts and agreements. In the list shown above, various types of contracts and agreements are being removed from this retention schedule. Since item A.6(g) (now item 4(d)) will continue to cover the retention of contracts "not specifically provided for in this section," it must be amended so that other categories that are being eliminated are not kept under item A.6(g). Accordingly, this item will make it clear that an oil pipeline company need not retain contracts with "employees and employee bargaining groups."

(d) In § 356.11, item C.5(a) (newly renumbered as item 10) requires oil pipeline companies to retain a "record or register of accounts receivable, indexes thereto, and summaries of distribution." Oil pipeline companies will no longer be requried to retain the indexes or summaries. The record or register of accounts receivable itself adequate.

(e) In § 356.11, item H.1(a) (newly renumbered as item 17) requires that oil pipeline companies retain "records of material and supplies on hand." In order to clear up an ambiguity, the final rule adds the words "at all locations" to this item.

(f) In § 356.11, item K covers records on "tariffs and rates." The final rule adds a footnote to this item to make clear that the retention periods in this item begin to run from the date of a "final Commission order determining the outcome of any tariff subject to refund and/or investigation."

Commenters generally support these changes in the description of records in order to identify more precisely the records to be retained. However, commenters suggest other changes to the Commission's descriptions of retention periods and descriptions of records to make them more precise. Except for one change to the oil pipeline retention schedules, the Commission has not adopted these suggestions because they are viewed as inappropriate at this time, particularly in that these changes are beyond those contemplated in the proposed rule. Many of these suggestions will, however, be considered again by the Commission's staff in their next review of the record retention schedules.

In response to one commenter, the Commission is adopting a change to its oil pipeline retention schedules. One commenter noted generally that it is unnecessary and unduly burdensome to require that oil pipeline companies retain records relating to pipeline property for three years after disposition of the property. The Commission generally believes that oil pipeline property records should be retained for the full period for valuation purposes. However, in one instance the Commission agrees with this commenter. Thus, item D2 (newly renumbered as item 13) in § 356.11 now distinguishes between engineering records that must be retained until three years after disposition of the property (plans and specifications), and those records that need to be retained only for 15 years after the property is built or acquired (certain estimates, studies, and bids).

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires agencies to prepare certain statements, descriptions and analyses of rules that will have "a significant economic impact on a substantial number of small entities." The Commission is not required to make such analyses if a rule will not have such an impact.

Most electric utilities, natural gas companies, and oil pipeline companies do not fall within the RFA's definition of small entity.[10] Most hydroelectric

[10] 5 U.S.C. 601(3) *citing to* section 3 of the Small Business Act, 15 U.S.C. 632 (Supp. V 1981). Section 3 of the Small Business Act defines "small-business concern" as a business which is independently

Continued

licenses, on the other hand, may fall within the small entity definition. Since the record retention burden on all types of regulated entities would be reduced by this rule, this rule has some positive economic impact on all regulated entities, both large and small. This is an intended and important impact. The Commission does not, however, believe that this impact will necessarily be "significant," at least within the meaning of the RFA. Pursuant to section 605(b) of the RFA, therefore, the Commission certifies that this rule, will not have a "significant economic impact on a substantial number of small entities."

V. Paperwork Reduction Act Statement and Effective Date

The information collection provisions in this rule will be submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act, 44 U.S.C. 3501–3520 (Supp. V 1981), and OMB's regulations, 48 FR 13,666, 13,694 (March 31, 1983) (to be codified at 5 CFR. Part 1320). Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, D.C. 20426 (Attention: Kenneth J. Malloy, (202) 357–8033). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for the Federal Energy Regulatory Commission).

This rule will become effective November 28, 1983. If OMB's approval and control number has not been received by this effective date, the Commission will issue a notice temporarily suspending the effective date.

(Natural Gas Act, 15 U.S.C. 717–717w (1976 and Supp. V 1981); Federal Power Act, 16 U.S.C. 791a–828c (1976 and Supp. V 1981); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (Supp. V 1981); Interstate Commerce Act, 49 U.S.C. 1–27 (1976); Executive Order 12,009, 3 CFR 142 (1978); 5 U.S.C. 553 (1976))

List of Subjects

18 CFR Part 125

Electric power, Electric utilities.

18 CFR Part 225

Natural gas.

18 CFR Part 356

Oil pipeline companies.

owned and operated and which is not dominant in its field of operation. *See also* SBA's Small Business Size Standards, 13 CFR Part 121 (1983).

In consideration of the foregoing, the Commission is amending parts 125, 225, and 356, Title 18, Chapter 1, Code of Federal Regulations, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

§§ 125.2 and 225.2 [Amended]

1. Sections 125.2 and 225.2 are amended, respectively, by revising paragraph (e)(1)(ii) to read as follows:

* * * * *

(e) Microform, tape and computer output certification.

(1) * * *

(ii) If an official permanent record series is a computer output product (*i.e.*, output paper or microfilm, jacketed microfiche, or aperture cards), any certification that may otherwise be required under paragraph (e)(1)(i) of this section is not required if:

(A) The series is prepared in accordance with written standard procedures developed, or accepted general business practices followed, by the company that ensure the integrity of record series that are the product of computer output; and

(B) Such procedures or practices include the name or title of the official responsible for validating or confirming the data contained in the record series and confirming that a particular computer output record series was produced in accordance with the standard procedures or practices.

* * * * *

2. Sections 125.2 and 225.2 are further amended in paragraph (g)(3) by removing the words "National Bureau of Standards" and inserting, in their place, the words "American National Standards Institute."

§§ 125.3 and 225.3 [Amended]

3. Sections 125.3 and 225.3 are amended by removing the words "life of the corporation" or "50 years" in the retention periods column of the following items, and, in the respective places, by inserting in the retention periods column the following:

(a) In item number 3.(a), the words "Retain until receipt of FERC audit report or two years after auditor's exit conference, whichever occurs first."

(b) In item 6.(a), the words "50 years or termination of the corporation's existence, whichever occurs first."

(c) In item 6.(b)(5), the words "6 years after final non-appealable order."

(d) In item 46.(a), the words "Retain until receipt of FERC audit report or two years after auditor's exit conference, whichever occurs first."

(e) In items 65.(c)(7) and 65.(c)(8), the words "Ten years after the plant is retired. See Section [insert "125.2(j)" in § 125.3 and "225.2(j)" in section 225.3]."

4. Section 125.3 is amended by removing the retention period in item 36.(a)(1) and inserting, in its place, the following:

Retain until receipt of FERC audit report or two years after auditor's exit conference, whichever occurs first.[6] See § 125.2(j).

5. Section 225.3 is amended by removing the retention period in item 36.(a)(1) and inserting, in its place, the following:

Retain until receipt of FERC audit report or two years after auditor's exit conference, whichever occurs first.

6. Section 125.3 is further amended by revising the description and retention period of item 22.1.(e) and by revising item 22.2, to read as follows:

§ 125.3 Schedule of records and period of retention.

* * * * *

22.1 Production—Electric (less nuclear):

* * * * *

(e) Station and system generation reports and clearance logs.		
(1) Hydro-electric	25 years.	*See* Section 125.2(j).
(2) Steam and others	6 years.	*See* Section 125.2(j).

* * * * *

22.2 Production—nuclear

For informational purposes, refer to the document retention requirements of the Nuclear Regulatory Commission.	

* * * * *

7. Sections 125.3 and 225.3 are further amended by revising the description in item 41.(a) and the description and retention period in items 45.(h) and 65.(a) to read as follows:

* * * * *

41. Material ledgers:		
(a) Ledger sheets of materials and supplies received, issued, and on hand.		Retain until receipt of FERC audit report or two years after auditor's exit conference, whichever occurs first.
* * * * *		
Revenue Accounting and Collecting		
45. Customers' service applications and contracts:		

	(h) Contracts for extensions of service for which contributions are made by customers or others	Retain until receipt of FERC audit report or two years after auditor's exit conference, whichever occurs first.
65.	Reports to Federal and State regulatory commissions:	
	(a) Annual financial, operating and statistical reports:	
	(1) Federal agencies	Retain until receipt of FERC audit report or two years after auditor's exit conference, whichever occurs first.
	(2) State Commissions	Retain as long as the active tariffs or rates are in effect.

8. Sections 125.3 and 225.3 are amended by removing entirely the following items (including both descriptions and retention periods) and inserting, in their place, the word "[Reserved]": 1, 2, 3(b), 4, 5, 6(b)(1)–6(b)(4), 6(c), 6(d), 7(c)–7(f), 9(a), 12(c), 12(d), 16, 17, 18, 19, 20(b), 20(d)–20(f), 21, 24, 25, 27, 28, 29, 35, 36(a)(2), 40(c), 41(b), 42(a), 42(b), 42(d), 42(e), 43(c), 44, 45(a)–45(g), 46(b), 47, 48, 50(b)–50(d), 52, 53, 54, 55, 56, 58(c)–58(f), 59(a), 59(b), 59(d), 59(e), 59(g), 61(c), 63, and 66(b).

9. Section 125.3 is further amended by removing entirely the following items (including both descriptions and retention periods) and inserting, in their place, the word "[Reserved]": 22.1(a), 22.1(b), 22.1(g), 22.1(k), 23(c)–23(m), 23(p), 60, 65(b), 65(c)(3), and 65(c)(9).

10. Section 225.3 is further amended by removing entirely the following items (including both descriptions and retention periods) and inserting, in their place, the word "[Reserved]": 22(a), 22(c)–22(e), 22(j), 22(l), 22(m), 22(o)–22(r), 23(c)–23(i), 23(m), 23.1(c), 37(b), 65(b), 65(c)(3), 65(c)(6), and 65(c)(9).

§ 356.11 [Amended]

11. Section 356.11 (Schedules of Records and Periods of Retention) is amended by removing entirely the following categories of records and their retention periods: A.3, A.4(e), A.5, A.6(d)–A.6(f), B.1, B.2(b)–B.2(g), B.3, B.7, C.3, C.4(c), C.4(d), C.5(b)–C.5(d), D. note, D.1(g), D.1(j), D.2(b), E.1, E.2(c)–E.2(j), F., G.2, G.3, H.1(b), H.2(b), H.2(c), H.3, H.4, I., J.1–J.11, K.2, K.6, L.1(b), L.1(c), L.2, L.5, and M.

12. Section 356.11 (Schedule of Records, and Periods of Retention) is further amended as follows:

(a) In the section entitled "A. Corporate and General", the title is amended by removing the letter "A.", and the items are redesignated as follows:

Old item No.	New item No.
1	1.
2	2.
4	3.
6	4.
6(g)	4.(d)
7	5.

(b) In the section entitled "B. Treasury", the title is amended by removing the letter "B.", and item 2 is redesignated as item "6.".

(c) In the section entitled "C. Financial and Accounting", the title is amended by removing the letter "C.", and the items are redesignated as follows:

Old item No.	New item No.
1	7.
2	8.
4	9.
5	10.
6	11.

(d) In the section entitled "D. Property and Equipment", the title is amended by removing the letter "D.", and items are redesignated as follows:

Old item No.	New item No.
1	12.
1(h)	12.(g)
1(i)	12.(h)
2	13.

(e) In the section entitled "E. Personnel and Payroll", the title is amended by removing the letter "E.", and item 2. is redesignated as item "14.".

(f) In the section entitled "G. Taxes", the title is amended by removing the letter "G.", and the items are redesignated as follows:

Old item No.	New item No.
1	15.
4	16.

(g) In the section entitled "H. Purchases and Stores", the title is amended by removing the letter "H.", and the items are redesignated as follows:

Old item No.	New item No.
1	17.
2	18.

(h) In the section entitled "J. Transportation", the title is amended by removing the letter "J.", and item 12 is redesignated as item "19.".

(i) In the section entitled "K. Tariffs and Rates", the title is amended by removing the letter "K.", and the items are redesignated as follows:

Old item No.	New item No.
1	20.
3	21.
4	22.
5	23.

(j) In the section entitled "L. Reports and Statistics", the title is amended by removing "L.", item 1 is renumbered as item "24.", and item 1(d) is renumbered as item "24(b)".

13. In section 356.11 (Schedule of Records and Periods of Retention), new items 4(d), 10, 13, 17, and 19 are revised, and a footnote is added to the heading "Tariffs and Rates", to read as follows:

§ 356.11 Schedule of records and periods of retention.

SCHEDULE OF RECORDS AND PERIODS OF RETENTION

Item No. and category of record	Retention period
Corporate and General	
4. Contracts and agreements.	
(d) Contracts, leases and agreements, not specifically provided for in this section but excluding contracts with employees and employee bargaining groups.	3 years after expiration or termination.
Financial and Accounting	
10. Accounts receivable, record, or register of accounts receivable.	3 years after settlement.
13. Engineering records:	
(a) Plans and specifications	3 years after disposition of property.
(b) Estimates of work, engineering studies, construction bids, and similar data pertaining to property changes actually made.	15 years.
Purchases and Stores	
17. Material ledger, records of material and supplies on hand at all locations.	2 years.
Transportation	
19. Oil and other products stocks and movement-pipelines only:	
(a) Records of receipts, deliveries, pumpings, stocks, and over and short.	3 years.
(b) Run tickets showing quantities by tank measurement of meter readings of oil and other products received into and delivered from company's lines.	Do.

SCHEDULE OF RECORDS AND PERIODS OF RETENTION—Continued

Item No. and category of record	Retention period
(c) Statements of oil and oil products consumed as fuel including quantity value, and where consumed.	3 years.
(d) Statement of oil and other products lost by line breaks and leaks including quantity, value, and location of breaks and leaks.	Do.
(e) Reports of power furnished by producers: monthly reports of the quantity of oil run in connection with which power was furnished by producers, and records of payment for such power.	Do.
(f) Records of producers' property identifying ownership and location of producers' tanks or wells to which carrier's lines are connected.	3 years after disconnection.
(g) Division or other periodical inventory reports of oil and other products on hand.	3 years.
(h) Division orders: Directions received by carrier as to the division of interest and to whose account transported oil should be credited.	3 years after discontinuance.
(i) Directions received by the carrier for the transfer of division order interests from one interest owner to another.	Do.
(j) Transfer orders for the transfer of ownership of oil or other products in carrier's custody.	3 years.
Tariffs and Rates [1]	
* * * * *	

[1] The retention periods for records in this item begin on the date of the final Commission order determining the outcome of any tariff subject to refund and/or investigation.

[FR Doc. 83-26536 Filed 9-28-83; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Part 271

[Docket No. RM79-76-168 (Colorado—32); Order No. 325]

High-Cost Gas Produced From Tight Formations; Colorado

Issued: September 27, 1983.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determined that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703 (1982)). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This final order adopts the recommendation of the State of Colorado Oil and Gas Conservation Commission that portions of the Upper Mesaverde Formation located in Mesa County, Colorado be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective October 27, 1983.

FOR FURTHER INFORMATION CONTACT: Jane M. Oliver, (202) 357-8316 or Victor H. Zabel, (202) 357-8616.

SUPPLEMENTARY INFORMATION: The Commission hereby amends § 271.703(d) of its regulations (18 CFR 271.703(d) (1982)) to include portions of the Upper Mesaverde Formation located in Mesa County, Colorado, as a designated tight formation eligible for incentive pricing under § 271.703. The amendment was proposed in a Notice of Proposed Rulemaking by the Director, Office of Pipeline and Producer Regulation, issued on January 27, 1983 (48 FR 4480, February 1, 1983), [1] based on a recommendation by the State of Colorado Oil and Gas Conservation Commission (Colorado) in accordance with § 271.703, that portions of the Upper Mesaverde Formation be designated as a tight formation.

Northwest Pipeline Corporation (Northwest) filed its comments with the Commission on March 14, 1983, in which it requests that the Commission review the permeability of the proposed tight formation, and the necessity for an incentive price for gas produced therefrom. Northwest states that it purchases gas from wells within the proposed area, and its records indicate a permeability of 3.17 millidarcies for one of those wells, the Coon Hollow No. 1 Well, located in Section 26, Township 8 South, Range 98 West. By a letter dated March 31, 1983, Northwest submitted technical data to show that this well's permeability is in excess of the 0.1 millidarcy standard set in § 271.703(c)(2)(i)(A) of the Commission's regulations.

For an area to be designated as a tight formation pursuant to section 107(c)(5) of the NGPA, § 271.703(c)(2)(i)(A) requires that the estimated average *in situ* permeability throughout the pay section must be expected to be 0.1 millidarcy or less.

Colorado's submission shows that the Coon Hollow No. 1 Well had a prestimulation flow rate of 1,020 Mcf per day, which exceeds the maxumum allowable of 44 Mcf per day. *See* § 271.703(c)(2)(i)(B) of the Commission's regulations. Colorado, pursuant to a request by Teton Energy Corporation at hearings held by Colorado, deleted 200 acres surrounding the Coon Hollow No. 1 Well from its proposal, as it was found to constitute a "sweet spot."

The Colorado recommendation is based on geological, engineering and production data from five wells within the proposed area and five wells adjacent to the proposed area. Permeability from one of the wells was tested from core samples and was measured at 0.03 millidarcy, which is less than the maximum allowable of 0.1 millidarcy. Prestimulation flow rates for the five wells averaged at less than 9 Mcf per day, which is well below the maximum allowable production rate of 44 Mcf per day. This data indicates that the Coon Hollow No. 1 Well is not representative of the area. Since the well and surrounding acreage was excluded from the proposed area, the permeability and production data for the Coon Hollow No. 1 Well were not considered in the permeability and production rate calculations for the proposed area.

The necessity for an incentive price for gas produced from a recommended tight formation is considered where the recommendation is filed under the alternate guidelines contained in § 271.703(c)(2)(ii) of the Commission's regulations. This alternative procedure is intended to be used where a formation meets the requirements of § 271.703(c)(2)(i) (B) and (C), (flow rate and oil production standards), but does not meet the permeability standard under § 271.703(c)(2)(i)(A).

Inasmuch as the area recommended by Colorado meets the permeability guideline, and 200 acres surrounding the Coon Hollow No. 1 Well are not included in the recommended area, the recommendation need not be considered under the alternative guidelines, and therefore, there is no need to review the need for an incentive price for production from this well.

Further, Northwest requests that the Commission consider "the underlying rationale for promulgation of the regulations which set forth the criteria applicable to receipt of tight sands incentive pricing * * *." The Commission has previously stated that such arguments constitute a "collateral attack on the assumptions on which Order No. 99 [2] is based, and the proper time to have raised [this] argument would have been at the time that Order No. 99 was being considered by the Commission." [3] The Commission

[1] No party requested a public hearing in this docket and no hearing was held.

[2] Order No. 99, Docket No. RM79-76-000, Regulations Covering High-Cost Natural Gas Produced From Tight Formations, 45 FR 56034 (1980).

[3] Order No. 226, Docket No. RM79-76-000 (Ohio-2), High-Cost Gas Produced from Tight Formations, Ohio; 47 FR 20573 (1982).

continues to find that it would be inappropriate to use a tight formation recommendation as a vehicle to reopen Order No. 99.

The proper means to seek review of Order No. 99 is to request that the Commission institute a rulemaking pursuant to § 385.207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207 (1982)). Presently, the Commission is proposing to modify the maximum lawful price of high-cost gas designated by the Commission under NGPA section 107(c)(5), to ensure that the ceiling prices do not go above the commodity value of natural gas. *See* Notice of Proposed Rulemaking, Docket No. RM82-32-000, 48 FR 7469 (February 22, 1983). Northwest's comments will be made a part of the record in this rulemaking since they address the issue of pricing of section 107(c)(5) gas.

Section 271.703(c)(2) requires that the Commission designate as a tight formation any formation which meets the guidelines found in § 271.703(c)(2) of the Commission's regulations. Accordingly, since the evidence submitted by Colorado [4] supports the assertion that portions of the Upper Mesaverde Formation located in Mesa County, Colorado meets the guidelines contained in § 271.703(c)(2) of the Commission's regulations, the Commission adopts Colorado's recommendation.

This amendment shall become effective October 27, 1983.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

(Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301—3432; Administrative Procedure Act, 5 U.S.C. 553)

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, *Code of Federal Regulations*, is amended as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—[AMENDED]

Section 271.703 is amended by adding paragraph (d)(142) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(142) *Upper Mesaverde Formation.* RM79-76-168 (Colorado—32).

(i) *Delineation of formation.* The Upper Mesaverde Formation is located in Mesa County, Colorado, in Township 8 South, Range 98 West, Section 25, N½, SE¼, N½SW¼, SE¼SW¼; Section 26, N½, SW¼, NW¼SE¼; Sections 27 through 34; Section 35, W½, SE¼, W½NE¼, SE¼NE¼; Section 36; Township 9 South, Range 98 West, Sections 1 through 12, 6th P.M.

(ii) *Depth.* The average depth to the top of the Upper Mesaverde Formation is 500 feet. The Upper Mesaverde Formation is defined as that formation which occurs between the top of the Cozzette-Corcoran members and the base of the Wasatch Formation, including the Rollins member. The Upper Mesaverde Formation averages 2,200 feet in thickness.

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BILLING CODE 6717-01-M

[4] The United States Department of the Interior, Minerals Management Service, Central Region concurs with Colorado's recommendation.

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18 CFR Part 271

[Docket No. RM79-76-198 (Colorado-37); Order No. 326]

High-Cost Gas Produced From Tight Formations; Colorado

Issued: September 27, 1983.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determined that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703 (1983)). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This final order adopts the recommendation of the Colorado Oil and Gas Conservation Commission that the Morrison Formation located in Mesa and Garfield Counties, Colorado, be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective October 27, 1983.

FOR FURTHER INFORMATION CONTACT: Tom Rattray, (202) 357-8476 or Victor Zabel, (202) 357-8616.

SUPPLEMENTARY INFORMATION: The Commission hereby amends § 271.703(d) of its regulations (18 CFR 271.703(d) (1983)) to include the Morrison Formation in Mesa and Garfield Counties, Colorado, as a designated tight formation eligible for incentive pricing under § 271.703. The amendment was proposed in a Notice of Proposed Rulemaking by the Director, Office of Pipeline and Producer Regulation, issued May 19, 1983 (48 FR 23272, May 24, 1983)[1] based on a recommendation by the Colorado Oil and Gas Conservation Commission (Colorado) in accordance with § 271.703, that the Morrison Formation, located in Mesa and Garfield Counties, Colorado, be designated as a tight formation.

Due to a misinterpretation of survey limits, the Notice of Proposed Rulemaking erroneously included Township 11 South, Range 98 West, Sections 15 through 22, and 27 through 34 as part of the recommended area. An Additional Notice of Proposed Rulemaking is not required because the erroneously included sections are nonexistent.

Evidence submitted by Colorado supports the assertion that the Morrison Formation located in Mesa and Garfield Counties, Colorado, meets the guidelines contained in § 271.703(c)(2).[2] The Commission adopts the Colorado recommendation.

This amendment shall become effective October 27, 1983.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

(Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432; Administrative Procedure Act, 5 U.S.C. 553)

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Code of Federal Regulations, is amended as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—[AMENDED]

Section 271.703 is amended by adding paragraph (d)(143), to read as follows:

§ 271.703 Tight formations.

* * * * *

[1] Comments on the proposed rule were invited and one comment supporting the recommendation was received. No party requested a public hearing and no hearing was held.

[2] The United States Department of the Interior, Bureau of Land Management, concurs with the Colorado recommendation.